apparently not reported, up to 151 U.S. ?

145-148653

RECORD, CASE No. 14,469.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 1015.

SARAH A. SLOAN ET AL., PLAINTIFFS IN ERROR,

vs.

JAMES M. STRICKLER, ADMINISTRATOR OF THOMAS M. SLOAN, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF COLORADO.

FILED JANUARY 31, 1891.

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a *Writ of Error to — Court U. S., District of Colorado.*

THE UNITED STATES OF AMERICA.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

The President of the United States to the judges of the supreme court of the State of Colorado, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, between Sarah A. Sloan, William B. Sloan, Callie Sloan, Laura Sloan, Edward Sloan, Bertie Sloan, Wm. Ottaway Sloan, Analiza Serrill, Ella Sherrill, Kate Sherrill, Eddie Sherrill, Charles Sherrill, Louisa Cordelia Mills, Thomas R. Sloan, Emmet Wells, Daniel Witter, James K. Doolittle, Michael (?), Wilbur C. Lothrop, and Amand S. Lockwood and James R. Strickler, administrator with the will annexed of the estate of Thomas M. Sloan, deceased, a manifest error hath happened, to the great damage of the said Sarah A. Sloan and others, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, at Washington, D. C., together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 13th day of January, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the 115th year.

Seal United States Circuit Court, District of Colorado.

WILLIAM A. WILLARD, *Clerk,*
By F. W. TUPPER, *Deputy Clerk.*

Allowed by—
—— ——, *Judge.*

b [Endorsed:] Gen. No., —. — court of the United States. —— ——, plaintiff- in error, *vs.* —— ——. Writ of error to — court U. S., district of Colorado. Filed in — court of the U. S. this — day of ——, A. D. 18—. —— ——, clerk, by —— ——, deputy clerk. —— ——, attorney for plaintiff- in error. Filed in supreme court Jan. 13, 1891. James A. Miller, clerk.

Return.

THE UNITED STATES OF AMERICA, } ss:
State of Colorado, }

In obedience to the command of the within writ I herewith transmit to the honorable Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, together with all things concerning the same, as indicated by the præcipe filed herein.

Witness my hand and the seal of said supreme court, at Denver, in said State, this 14th day of January, 1891.

[Seal Supreme Court, State of Colorado.]

JAMES A. MILLER, *Clerk,*
By —— ——, *Deputy Clerk.*

c *Citation, U. S. — Court.*

THE UNITED STATES OF AMERICA, }
District of Colorado. }

The United States of America to James M. Strickler, administrator with the will annexed of the estate of Thomas M. Sloan, deceased, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the 12th day of October next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the United States, wherein Sarah A. Sloan, William B. Sloan, Laura Sloan (now Laura Bailey), Edward Sloan, Bertie Sloan, William Ottaway Sloan, Analiza Sherrill, Ella Sherrill, Kate Sherrill, Eddie Sherrill, Charles Sherrill, Louisa Cordelia Mills, Thomas R. Sloan, Emmet Wells, Daniel Witter, James K. Doolittle, Mitchell Benedict, Wilbur C. Lothrop, and Amanda S. Lockwood — plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff- in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph C. Helm, chief justice of the supreme court of the State of Colorado, this 13th day of January, in the year of our Lord one thousand eight hundred and ninety-one.

JOSEPH C. HELM,
Chief Justice Supreme Court of Colorado.

d [Endorsed:] Gen. No., —. — court of the United States, district of Colorado. Sarah A. Sloan *et al.*, plaintiffs in error, *vs.* James M. Strickler, adm'r, &c., defendant in error. Citation. Filed in — court of the U. S. this — day of ——, A. D. 18—. ——, clerk, by —— ——, deputy clerk. —— ——, attorney for plaintiff- in error.

Proof of Service.

THE UNITED STATES OF AMERICA, } ss:
State of Colorado, }

On this 15th day of January, A. D. 1891, personally appeared F. A. Richardson before me, the subscriber, clerk of the supreme court of the State of Colorado, and makes oath that he delivered a true copy of the within citation to James M. Strickler, the defendant in error herein.

F. A. RICHARDSON.

Seal Supreme Court, State of Colorado. Sworn to and subscribed before me this 15 day of January, A. D. 1891.

JAMES A. MILLER,
Clerk Supreme Court, Colorado.

e UNITED STATES OF AMERICA, } ss:
State of Colorado, }

Pleas before the honorable the supreme court of Colorado, at the city of Denver.

Present: Hon. Joseph C. Helm, chief justice; Hon. Victor A. Elliott and Hon. Chas. D. Hayt, justices; F. A. Richardson, Esq., bailiff; James A. Miller, clerk.

Be it remembered that heretofore and on, to wit, July 31, A. D. 1883, there was filed in the office of the clerk of the supreme court of Colorado a transcript of the record and proceedings of a certain cause theretofore heard by the county court of the county of Arapahoe and State aforesaid, wherein Sarah A. Sloan *et al.* were plaintiffs and James M. Strickler, administrator, etc., was defendant; which said transcript and further proceedings in said supreme court, as indicated to be certified by the præcipe of plaintiffs in error filed herein, are as follows, to wit:

1 In the Supreme Court of the State of Colorado, to December Term, A. D. 1883.

SARAH A. SLOAN, WILLIAM B. SLOAN, CALLIE SLOAN, LAURA Sloan (now Laura Bailey), Edward Sloan, Bertie Sloan, William Ottaway Sloan, Analiza Sherrill, Ella Sherrill, Kate Sherrill, Eddie Sherrill, Charles Sherrill, Louisa Cordelia Mills, Thomas R. Sloan, Emmet Wells, Daniel Witter, James K. Doolittle, Mitchell Benedict, Wilbur C. Lothrop, and Amanda S. Lockwood, Plaintiffs in Error,

vs.

JAMES M. STRICKLER, Administrator with the Will Annexed of the Estate of Thomas M. Sloan, Deceased, Defendant in Error.

Writ of Error to the Probate Court of Arapahoe County.

Complete record in the matter of the estate of Thomas M. Sloan, deceased, in the county court of Arapahoe county and State of Colorado.

2 *Transcript of Record.*

UNITED STATES OF AMERICA, }
Territory of Colorado, Arapahoe County, } *ss:*

In the Probate Court for Probate, February Term, A. D. 1874.

Pleas before the Honorable William C. Kingsley, judge of the probate court within and for the county of Arapahoe aforesaid, and at a term thereof begun and held at the court-house, in the city of Denver, in said county, on the first Monday (being the second day) of February, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-eighth.

Present: Honorable William C. Kingsley, judge; Edward A. Willoughby, sheriff.

Be it remembered that on, to wit, the 18th day of February, A. D. 1874, the same being one of the regular days of the February term, A. D. 1874, of said court, sitting in matters of estates, came George H. Mills and John W. Horner and filed in said court their petition for the probate of a certain instrument of writing purporting to be the last will and testament of Thomas M. Sloan, deceased; which said petition is recorded in Documentary Record No. 2, at page 500, of the records of said court, and is in the words and figures following, to wit:

3 TERRITORY OF COLORADO, }
County of Arapahoe, } *ss:*

In the Probate Court, Sitting in Matters of Estates, etc., in and for said County.

To W. C. Kingsley, judge of said court:

The petition of the undersigned represents that Thomas M. Sloan,

late of the county of Arapahoe and Territory of Colorado, departed this life at Denver, in said county, on or about the thirteenth day of February, A. D. 1874, leaving a last will and testament, which is herewith presented to the said court for probate.

Your petitioners further represent that said will is subscribed by John Veasey and Theodore Leland, both of the city of Denver, in said county, as witnesses to the execution thereof.

The said testator in said will nominated and appointed George H. Mills and John W. Horner, your petitioners, executors thereof, and that your petitioners are ready and willing to accept the office and trust confided to them.

Your petitioners further show that the said Thomas M. Sloan died seized and possessed of real estate estimated to be worth about fifteen thousand dollars, and also died possessed of personal estate estimated to be worth about one hundred dollars.

That said testator left him surviving a widow, Sarah A. Sloan, who resides in Denver, in said Territory, and also the following adult heirs-at-law, to wit: William B. Sloan, at present of the State of Ohio; Amanda J. Lockwood, of Denver; Ann Eliza Sherrill, of Denver; Thomas R. Sloan, of the same place; Louisa C. Mills, of the same place.

4 In consideration whereof, and to the end that said will may be proved, established, and performed, your petitioners pray that the subscribing witnesses aforesaid may be summoned to be and appear before this court at such time as the court may direct, then and there to testify in the matter of said will, and that probate of said will may be thereupon granted and the same ordered for record.

And that a citation may issue to such widow and heirs-at-law, requiring them and each of them to attend the probate of said will before the court at a day to be named in said citation.

And your petitioners further pray that your honor will grant them letters testamentary of said last will and testament upon them taking the oath prescribed by the statute and entering into bond in such sum and with such securities as may be approved by your honor.

GEORGE H. MILLS.
JOHN W. HORNER.

TERRITORY OF COLORADO, } ss:
County of Arapahoe, }

George H. Mills, one of the above-named petitioners, being duly sworn, says that the facts averred in the above petition are true in substance and in fact.

GEORGE H. MILLS.

Sworn to and subscribed before me this 18th day of February, 1874.

W. C. KINGSLEY,
Probate Judge.

Endorsed: In probate. Last will and testament of Thos. M. Sloan. Petition, etc. Filed 18th July, 1874. W. C. Kingsley, probate judge. Recorded in Deed Book # 2, page 500.

And with and at the time of the filing of said petition the said George H. Mills and John W. Horner presented to the judge of and filed in said court an instrument of writing purporting to be the last will and testament of Thomas M. Sloan, deceased; which said instrument is in the words and figures following, to wit:

5 In the name of God, amen, I, Thomas M. Sloan of Denver, in the county of Arapahoe, in the Territory of Colorado, being of sound mind and memory, in the view of the uncertain- of life do make and declare this my last will and testament as follows, to wit:

First, I will that after my death my body shall receive a Christian burial, and my funeral charges be paid, and that over my grave a marble monument be erected to cost two hundred dollars more or less, and that the same be paid for by my executors hereinafter named out of assets belonging to my estate, that shall or may come into their hands.

Second, I will that all my just debts be paid by my executors hereinafter named.

Third, I give and bequeath unto my beloved wife Sarah A. Sloan, the southeast quarter (¼) of section number thirty-six (36) in township three (3) south of range sixty-nine (69) west, situat- in Jefferson county in the Territory of Colorado, also block number thirty-eight (38) in Lakeville, being a portion of section thirty-one (31) in township three (3) south of range sixty-eight (68) west, also all and singular the household goods of which I may be possessed at the time of my death, also the family carriage.

Fourth, I give and bequeath unto my eldest son William B. Sloan block number two (2), in Lakeville, if he shall survive me, but if he shall not be living at the time of my death, then to the heirs-at-law of my said son, William B. said real estate situate in Arapahoe county, in the Territory of Colorado.

Fifth, I give and bequeath unto my granddaughter Callie Sloan, daughter of my son William B. block number eighteen (18), in Lakeville, in the county of Arapahoe, in the Territory of Colorado.

6 Sixth, I give and bequeath unto my granddaughter Larie Sloan, daughter of my son William B., block number seventeen (17), in Lakeville, in the county of Arapahoe, in the Territory of Colorado.

Seventh, I give and bequeath unto my grandson, Edward Sloan, son of my son William B., block number forty-eight (48), in Lakeville, in the county of Arapahoe, in the Territory of Colorado.

Eighth, I give and bequeath unto my grandson, Burtie Sloan, son of my son William B., block number thirty-nine (39), in Lakeville, in the county of Arapahoe, in the Territory of Colorado.

Ninth, I give and bequeath unto my grandson William Ottaway Sloan, son of my son William B., block number thirty-one (31), in Lakeville, in the county of Arapahoe, in the Territory of Colorado.

Tenth, I give and bequeath unto my daughter, Amanda S. Lockwood, block number thirty-six (36), in Lakeville, also the money due me from the estate of Platt Lockwood, deceased, being three thousand dollars, more or less, said real estate being situated in the county of Arapahoe, in the Territory of Colorado.

Eleventh, I give and bequeath unto my daughter, Analiza Sherrill, block numbered sixteen (16), in Lakeville, also block eight (8), in Lakeville, all in Arapahoe county, in the Territory of Colorado.

Twelfth, I give and bequeath unto my granddaughter, Ella Sherrill, daughter of Analiza, block number nine (9), in Lakeville, in the county of Arapahoe, in the Territory of Colorado.

Thirteenth, I give and bequeath unto my granddaughter, Kate Sherrill, daughter of Analiza, block number twenty-one (21), in Lakeville, in the county of Arapahoe, in the Territory of Colorado.

7 Fourteenth, I give and bequeath unto my grandson, Eddie Sherrill, son of Analiza, block numbered twenty-eight (28), in Lakeville, in the county of Arapahoe, in the Territory of Colorado.

Fifteenth, I give and bequeath unto my grandson, Charley Sherrill, son of Analiza, block numbered twenty-nine (29), in Lakeville, in the county of Arapahoe, in the Territory of Colorado.

Sixteenth, I give and bequeath unto my daughter Louisa Cordelia Mills, wife of George H. Mills, blocks numbered four (4), five (5), and six (6), and three (3), and seven (7), in Lakeville, in the county of Arapahoe, in the Territory of Colorado, also twelve hundred and twenty (1,220) acres of land, situated in O'Brien county, in the State of Iowa, more particularly described in a deed from John Prescott to my said daughter Louisa.

Seventeenth, I give and bequeath unto my son Thomas R. Sloan, the east part of the northwest quarter (¼) of section number thirty-one (31), in township three (3), south of range sixty-eight (68) west, containing thirty-eight acres, more or less, also block numbered one (1), and twelve (12), in Lakeville, all in Arapahoe county, in the Territory of Colorado.

Eighteenth, It is my will that my executors hereinafter named shall, as soon after my death as practical, (shall) dispose of all of my estate, both real and personal, not hereinbefore disposed of by me by way of bequest and of which I may die seized, and I hereby authorize them to sell and convey the same for such consideration, and on such terms as they may deem for the best interest of my estate, and out of the proceeds arising from such sale or sales to pay all just debts owing by me at time of my decease, and such expenses

8 as are provided to be made by virtue of this my last will and testament, and the expenses incurred in settling up my estate.

Nineteenth, Reposing full trust and confidence in John W. Horner and George H. Mills, of the county of Arapahoe, in the Territory of Colorado, I hereby appoint and nominate them the executors of this my last will and testament, with all the authority to them or the survivor of them not hereinbefore given, that shall be necessary

to enable them to settle up my estate in the most speedy, economical and satisfactory manner.

In witness whereof, I have hereunto set my hand and affixed my seal this second day of December, A. D. 1873.

THOS. M. SLOAN, [L. S.]

Signed, sealed and declared by the above-named Thomas M. Sloan to be his last will and testament in the presence of us, who at his request and in his presence and in the presence of each other have subscribed our names as witnesses thereto.

J. M. VEASEY.
THEO. LELAND.

Last will and testament of Thos. M. Sloan, deceased, with proof and oath of administration *cum testamento annexo*. Recorded in Book of Wills on pages 228 to 235, inclusive. (Last will and proof of.) Filed 18th Feb'y, 1874. W. C. Kingsley, probate judge.

And oath of adm., etc., filed 9 March, 1874.

W. C. KINGSLEY,
Probate Judge.

And afterwards, on, to wit, the same day, the following order was had and entered of record in said court, to wit:

9 In the Matter of the Estate of THOMAS M. SLOAN, Deceased.

And now, to wit, on this eighteenth day of February, A. D. eighteen hundred and seventy-four, come George H. Mills and John W. Horner, and present and file herein their petition, showing to the court here that Thomas M. Sloan, late of the county of Arapahoe and Territory of Colorado, departed this life at Denver, in said county, on or about the thirteenth day of February, A. D. eighteen hundred and seventy-four, leaving a last will and testament, which is here presented to the said court for probate; that said paper, purporting to be the will of said deceased, is subscribed by John Veasey and Theodore Leland, both of the said city of Denver, in said county, as witnesses to the execution thereof; that said deceased in the said will nominated and appointed the said petitioners as executors thereof; that the said Thomas M. Sloan died seized and possessed of real estate estimated to be worth about fifteen thousand dollars and personal estate of the value of about one hundred dollars; that the said deceased left him surviving a widow, Sarah A. Sloan, who resides in Denver, in said Territory, and the following-named adult heirs-at-law, to wit, William B. Sloan, at present a resident of the State of Ohio; Amanda S. Lockwood, Ann Eliza Sherrill, Thomas R. Sloan, and Louisa C. Mills, all of said city of Denver, county and Territory aforesaid, and praying that such will may be admitted to record and probate in said court; and thereupon, after the court reading and inspecting the said petition and instrument filed as the last will and testament of said deceased, and being satisfied of the facts stated in said petition and of the death

of the said Thomas M. Sloan, and being advised in the
10 premises, it is ordered by the court that the twenty-eighth day of February, A. D. eighteen hundred and seventy-four, be, and it is hereby, fixed as the day for the hearing of the proof of such writing purporting to be the last will and testament of the said Thomas M. Sloan, deceased, and that a citation issue to the said widow and heirs-at-law of said deceased, returnable on the said last-mentioned day, and that a subpœna issue to the said subscribing witnesses to the paper purporting to be the last will of said deceased, returnable as aforesaid, and it is accordingly done.

And afterwards, to wit, upon the 18th day of February, 1874, there issued out of said court a citation under the hand and seal of the judge thereof; which said citation is recorded in Documentary Record No. 2, page 501 of the records of said court, and is in the words and figures following, to wit:

TERRITORY OF COLORADO, } *ss*:
County of Arapahoe, }

The people of the Territory of Colorado to Sarah A. Sloan, widow; William B. Sloan, Amanda S. Lockwood, Ann Eliza Sherrill, Thomas R. Sloan, and Louisa C. Mills, heirs-at-law of Thomas M. Sloan, deceased, Greeting:

Whereas a certain writing, purporting to be the last will and testament of Thomas M. Sloan, late of said county, deceased, was presented to our probate court in and for said county of Arapahoe, on the 18th day of February, A. D. 1874, by George H. Mills and John W. Horner, of said county and Territory, together with the proof of the death of said Thomas M. Sloan, deceased, and that, upon the presentation of the same and the petition and proofs therewith submitted, it was ascertained that the said George H. Mills
11 and John W. Horner were named as executors of said writing, and that said Sarah A. Sloan was the widow of said deceased, and that you, the said William B. Sloan, Amanda S. Lockwood, Ann Eliza Sherrill, Thomas R. Sloan, and Louisa C. Mills, were heirs-at-law of the said deceased, and the twenty-eighth day of February, A. D. 1874, at 2 o'clock p. m. of that day, was fixed as the time for the hearing of the proof of the said will, and it was ordered that a citation issue to said widow and heirs-at-law, returnable before our said court on said last-mentioned day:

You and each of you are therefore hereby cited and required to be and appear before our said probate court on the said twenty-eighth day of February, A. D. 1874, then and there to attend a hearing of the proof of such writing purporting to be the will of said deceased, when and where such objections, if any, as you may desire to interpose to the admission of the same to record and probate can be heard.

Witness William C. Kingsley, judge of said court, and [SEAL.] the seal thereof, at Denver, this 18th day of February, 1874.

WILLIAM C. KINGSLEY,
Probate Judge.

To the sheriff of Arapahoe to serve and return as the law directs.

And afterwards, to wit, upon the 18th day of February, A. D. 1874, there issued out of said court under the hand and seal of the judge thereof a writ of subpœna; which said writ is in the words and figures following, to wit:

TERRITORY OF COLORADO, } ss:
County of Arapahoe, }

The people of the Territory of Colorado to John Veasey and Theodore Leland:

12 You are hereby commanded to appear before the probate court of said county, in Denver, on the twenty-eighth day of February, A. D. 1874, at two o'clock in the afternoon, then and there to testify the truth in a matter of the probate of the last will of Thomas M. Sloan, deceased, and this you are not to omit under penalty of the law.

Witness William C. Kingsley, judge of said court, and [SEAL.] the seal thereof, at Denver, this 18th day of February, A. D. 1874.

WILLIAM C. KINGSLEY,
Probate Judge.

Subpœna *In re* Sloan estate.

And afterwards, to wit, on the said 20th day of February, 1874, came the sheriff and filed herein the writ of subpœna heretofore issued, with the return thereon written; which said return is in the words and figures following, to wit:

TERRITORY OF COLORADO, } ss:
County of Arapahoe, }

FEBRUARY 20TH, 1874.

I have duly executed the within by reading the same to the within-named John Veasey and Theodore Leland and giving to each two dollars and sixty-five cents each, being fees and mileage, as I am herein commanded.

E. A. WILLOUGBY, *Sheriff,*
By H. S. NONES, *Deputy.*

Services, $1.50; mileage, .15—1.65. Paid by H. Mills. Paid witnesses $5.30.

Subpœna *In re* Sloan estate. Filed 20th of February, 1874.
W. C. KINGSLEY,
Probate Judge.

In the matter of the estate of Thomas M. Sloan, deceased. Citation.

13 And afterwards, to wit, upon the 28th day of February, A. D. 1874, came E. A. Willoughby, sheriff as aforesaid, and files herein the citation heretofore issued, with the return thereon written; which said return is in the words and figures following, to wit:

TERRITORY OF COLORADO, } ss:
County of Arapahoe, }

FEB'Y 28TH, 1874.

I have duly executed the within by reading the same to the within-named Sarah A. Sloan, Amanda S. Lockwood, Thomas R. Sloan, and Louisa C. Mills on the 20th day of Feb'y, and Ann Eliza Sherrill on the 23rd day of Feb'y, and William B. Sloan on this 28th day of Feb'y, 1874.

E. A. WILLOUGHBY, *Sheriff,*
By H. S. NONES, *Deputy.*

Service, $4.50; mileage, .90—$5.40. Paid by Geo. H. Mills.

I hereby accept service of the within citation and expressly waive all further notice of the time and place and subject of the within this 28th day of February, A. D. 1874.

WM. B. SLOAN.

In the matter of the estate of Thomas M. Sloan, deceased. Citation.

TERRITORY OF COLORADO, } ss:
Arapahoe County, }

I have duly executed the within by reading the same to —— ——.
Filed Feb'y 28th, 1874.

W. C. KINGSLEY,
Probate Judge.

Recorded in Deed Record No. 2, page 501.

And upon the hearing of the application of John W. Horner and George H. Mills to have said instrument in writing admitted
14 to probate and record, the testimony of J. M. Veasey and Theodore Leland was taken in open court and reduced to writing by the judge thereof; which said testimony is as follows, to wit:

TERRITORY OF COLORADO, } ss:
County of Arapahoe, }

In the Probate Court in and for Arapahoe County and Territory of Colorado, Sitting for the Probate of Wills, etc., February Term, 1879.

In the Matter of the Probate of the Last Will and Testament of THOMAS M. SLOAN, Deceased.

The testimony of J. M. Veasey and Theodore Leland, subscribing witnesses to the last will and testament of Thomas M. Sloan, late of the city of Denver, deceased, witnesses of lawful age, produced, sworn, and examined upon their corporal oaths in open court on the twenty-eighth day of February, anno Domino eighteen hundred and seventy-four, in a certain matter of the hearing of the last will and testament for probate of Thomas M. Sloan, deceased, now pending and undetermined in the said probate court.

The said J. M. Veasey and Theodore Leland being first duly sworn by the court as witnesses in the said matter previous to the commencement of their examination to testify the truth, the whole truth, and nothing but the truth touching the making and the execution of the instrument in writing here in court produced as the last will and testament of Thomas M. Sloan, deceased, on their oaths deposed and testified as follows:

The said J. M. VEASEY testified:

My name is J. M. Veasey; my age, fifty-one years, and my residence, Denver, Territory of Colorado, and my occupation a real-estate and grain dealer.

15 I was acquainted with Thomas M. Sloan in his lifetime, but now deceased. He resided in the city of Denver, county of Arapahoe, and Territory of Colorado, previous to his death, and he died in said city on the thirteenth day of February, anno Domino eighteen hundred and seventy-four.

I was present at the residence of said Thomas M. Sloan, deceased, in the city of Denver aforesaid, on the second day of December, anno Domino eighteen hundred and seventy-three, at the making and execution of a last will and testament by the said Thomas M. Sloan, now deceased, and Theodore Leland, of the said city of Denver, was also present.

The will and testament here in court produced and shown to the witness, who then further testified as follows:

This is the instrument in writing which was then executed.

The said Thomas M. Sloan, now deceased, subscribed his name at that time and upon that occasion to this instrument in writing here in court produced as his last will and testament in my presence and also in the presence of the said Theodore Leland, and then and there, in the presence and hearing of myself and in the presence and hearing of the said Theodore Leland, the said Thomas M. Sloan

now deceased, acknowledged, published, and declared the said instrument in writing here in court now produced to be his last will and testament, and myself and the said Theodore Leland then and there, in the presence of each other and also in the presence of the said Thomas M. Sloan, now deceased, and at the request of the said Thomas M. Sloan, now deceased, subscribed our names as witnesses thereto.

I believe the said Thomas M. Sloan, deceased, to have been
16 of sound and disposing mind, memory, and understanding at the time of the execution of the said instrument in writing here in court produced as his last will and testament.

J. M. VEASEY.

TERRITORY OF COLORADO, } ss:
County of Arapahoe, }

I, William C. Kingsley, probate judge in and for said county of Arapahoe, do hereby certify that the foregoing testimony of J. M. Veasey was taken by me in open court this twenty-eighth day of February, anno Domino eighteen hundred and seventy-four, and by me at the time reduced to writing; that previous to the examination of the said J. M. Veasey as a witness in the matter aforesaid he was duly sworn by me in open court to testify the truth, the whole truth, and nothing but the truth touching the making and the execution of the instrument in writing in court produced as the last will and instrument of Thomas M. Sloan, deceased; that after said testimony was reduced to writing by me as aforesaid the same was read over to the said witness, and that thereupon the same was signed and sworn to by the said witness, J. M. Veasey, before me on the day and year last aforesaid.

[SEAL.] WILLIAM C. KINGSLEY,
Probate Judge.

The said THEODORE LELAND testified:

My name is Theodore Leland; my age, thirty-seven years, and my residence, Denver, Territory of Colorado, and my occupation, a real-estate broker. I was acquainted with Thomas M. Sloan in his lifetime, but now deceased. He resided in the city of Denver, county of Arapahoe, in the Territory of Colorado, previous to his death, and he died in said city on the thirteenth day of February, anno Domino eighteen hundred and seventy-four.

17 I was present at the residence of said Thomas M. Sloan, deceased, in the city of Denver aforesaid, on the second day of December, anno Domino eighteen hundred and seventy-three, at the making and execution of a last will and testament by the said Thomas M. Sloan, now deceased; and J. M. Veasey, of the said city of Denver, was also present. (The will and testament here in court produced and shown to the witness, who then further testifies as follows:)

This is the instrument in writing which was then executed.

The said Thomas M. Sloan, now deceased, subscribed his name at that time and upon that occasion to this instrument in writing

here in court produced as his last will and testament in my presence and also in the presence of the said J. M. Veasey, and then and there, in the presence and hearing of myself and in the presence and hearing of the said J. M. Veasey, the said Thomas M. Sloan, now deceased, acknowledged, published, and declared the said instrument in writing here in court produced to be his last will and testament, and myself and the said J. M. Veasey then and there, in the presence of each other and also in the presence of the said Thomas M. Sloan, now deceased, and at the request of the said Thomas M. Sloan, now deceased, subscribed our names as witnesses thereto.

I believe the said Thomas M. Sloan to have been of sound and disposing mind, memory, and understanding at the time of the execution of the said instrument in writing here in court produced as his last will and testament.

THEODORE LELAND.

TERRITORY OF COLORADO, } ss:
County of Arapahoe, }

I, William C. Kingsley, probate judge in and for said
18 county of Arapahoe, do hereby certify that the foregoing testimony of Theodore Leland was taken by me in open court this twenty-eighth day of February, anno Domino eighteen hundred and seventy-four, and by me at the time reduced to writing; that previous to the examination of the said Theodore Leland as a witness in the matter touching the making and execution of the last will and testament of Thomas M. Sloan, deceased, he was duly sworn by me in open court to testify the truth, the whole truth, and nothing but the truth touching the matter aforesaid; that after said testimony was reduced to writing by me as aforesaid the same was read over to the said witness, and that thereupon the same was signed and sworn to by the said witness, Theodore Leland, before me on the day and year last aforesaid.

[SEAL.] WILLIAM C. KINGSLEY,
Probate Judge.

And afterwards and [illegible]on, to wit, the 28th day of February, A. D. 1874, the following order was had and entered of record in said court, to wit:

In the Matter of the Estate of THOMAS M. SLOAN, Deceased.

And now, to wit, on this 28th day of February, A. D. 1874, this being the day to which the hearing of the proof of the paper purporting to be the last will and testament of said deceased was adjourned from the 18th inst., comes Sarah A. Sloan, widow of said deceased, and thereupon the court proceeds to hear proof of such writing so purporting to be the will of said deceased, and thereupon J. M. Veasey and Theodore Leland, the subscribing witnesses to said paper purporting to be the will of said deceased, are by the court duly sworn to testify and the truth to speak touching the
19 making and execution of the said instrument here in court produced as the will of said deceased, and it appearing from

the evidence of the said J. M. Veasey and Theodore Leland that they were present in the city of Denver, in the Territory of Colorado, at the residence of said deceased, on the 2d day of December, A. D. 1873, and saw the said deceased sign his name to the instrument here in court produced as his last will and testament, and that the said deceased then and there acknowledged, published, and declared the same to be his last will and testament in the presence and hearing of the said J. M. Veasey and Theodore Leland, who, at his request and in his presence and in the presence of each other, then and there subscribed their names as witnesses thereto, and that the said subscribing witnesses believe the said Thomas M. Sloan to have been of sound and disposing mind and memory at the time of the execution of said instrument in writing so purporting to be his last will and testament, it is therefore considered by the court that the instrument in writing here in court produced as the last will and testament of the said Thomas M. Sloan, deceased, is duly proved to be the last will and testament of said deceased, and that the same be admitted to record and probate in this court, and it is accordingly recorded in Book of Wills 1, on pages 228 to 235, inclusive, together with the proof of the same thereto attached; and thereupon come John W. Horner, Esq., and Geo. H. Mills, Esq., the persons nominated in the said will as the executors thereof, and apply to the court here for letters testamentary in the estate of said deceased; and thereupon, the court being advised in the premises, it is ordered by the court that the letters testamentary issue to the said John W. Horner and George H. Mills on the estate of said deceased, and that they give bond in the sum of thirty thousand two hundred dollars conditioned as required by law and with sureties to be approved by the court.

And afterwards, to wit, upon the 9th day of March, A. D. 1874, came again John W. Horner and George H. Mills and filed herein their resignation as executors; which said resignation is recorded in Documentary Record No. 2, at page 502, of the records of said court, and is in the words and figures following, to wit:

TERRITORY OF COLORADO, } ss:
County of Arapahoe, }

In the Probate Court within and for the County of Arapahoe, in the Territory of Colorado.

In the Matter of the Estate of THOMAS M. SLOAN, Deceased.

We, the undersigned, executors as designated by the last will and testament of Thomas M. Sloan, deceased, do hereby tender our resignation as such executors, and decline to qualify as such executors.

JOHN W. HORNER.
GEORGE H. MILLS.

In matter of estate of Thomas M. Sloan, deceased.
Resignation of executors under the will.
Filed 9th March, 1874.

W. C. KINGSLEY,
Probate Judge.

Recorded in Deed Record No. 2. page 502.

And upon the same day, to wit, the 9th day of March, A. D. 1874, the widow and heirs-at-law of Thomas M. Sloan, deceased, filed herein their relinquishment of right to administer; which said relinquishment is recorded in Documentary Record No. 2,
21 at page 502, of the records of said court, and is in the words and figures following, to wit:

TERRITORY OF COLORADO, }
County of Arapahoe, } *ss*:

In the Probate Court within and for the said county and Territory.

To the judge of said court:

The undersigned, the widow and as well the heirs of the late Thomas M. Sloan, deceased, testate, decline to act as administrator (with the will annexed), and have in lieu of either of them selected J. M. Strickler, Esq., a man in whom the said parties have unbounded confidence, and request your honor to appoint said Strickler such administrator, and in case said Strickler should decline to accept the trust, then and in that case some other suitable person.

Denver, March 10th, 1874.

Respectfully yours,

SARAH A. SLOAN, *Widow.*
AMANDA S. LOCKWOOD, *Heir.*
WM. B. SLOAN, *do.*
ANN E. SHERRILL, *do.*
LOUISA C. MILLS, *do.*
THOMAS R. SLOAN, *do.*

In re Sloan estate. Relinquishment of widow and heirs-at-law. Filed 9th March, '74.

W. C. KINGSLEY,
Probate Judge.

Deed Record No. 2, page 502.

And upon the same day, to wit, the 9th day of March, A. D. 1874, came Fred. A. Driscol, a creditor of the estate of Thomas M. Sloan, and filed in said court his relinquishment of right to ad-
22 minister; which said relinquishment is recorded in Documentary Record No. 2, at page 503, of the records of said court, and is in the words and figures following, to wit:

TERRITORY OF COLORADO, }
County of Arapahoe. }

In the Matter of the Last Will and Testament of THOS. M. SLOAN, Deceased.

I hereby relinquish my right to administer upon the estate of Thomas M. Sloan as a creditor thereof and ask the court to appoint F. M. Tressler to such trust.

Denver, March 9th, 1874.

FRED. A. DRISCOL.

In re estate of Thos. M. Sloan, dec'd.
Relinquishment of right to be adm. by Driscol as creditor.
Filed 9th March, '74.

W. C. KINGSLEY,
Probate Judge.

Deed Record No. 2, page 503.

And upon the same day, to wit, March 9th, A. D. 1874, comes James M. Strickler and files herein his bond as administrator with the will annexed of the estate of Thomas M. Sloan, deceased; which said bond is recorded in Documentary Record No. 2, at page 504, of the records of the said court, and in the words and figures following, to wit:

Know all men by these presents that we, James M. Strickler, Cornelius J. Mahar, Sam'l A. Hutchins, Julius Hedge, and Andrew S. Hughes, of the county of Arapahoe and Territory of Colorado, are held and firmly bound unto the people of the Territory of Colorado in the penal sum of thirty thousand two hundred dollars, current money of the United States; to which payment, well and truly to be made and performed, we and each of us bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly, by these presents.

Witness our hands and seals this ninth day of March, A. D. 1874.

The condition of the above obligation is such that if the above-bounden James M. Strickler, administrator with the will annexed of Thomas M. Sloan, deceased, do make or cause to be made a true and perfect inventory of all and singular the goods and chattels, rights and credits, lands, tenements, and hereditaments and the rents and profits issuing out of the same of the said deceased which have or shall come to the hands, possession, or knowledge of the said James M. Strickler or into the possession of any other person for him, and the same so made do exhibit in the probate court for the said county of Arapahoe, as required by law, and also make and render a fair and just account of his actings and doings as such administrator with the will annexed to said court when thereunto lawfully required, and to well and truly fulfil the duties enjoined on him in and by said will, and shall, moreover, pay and deliver to the persons entitled thereto all the legacies and bequests contained in said will, so far as the estate of the said testator will thereunto extend, according to the value thereof and as the law shall charge him, and shall in general do all other acts which may from time to time be required of him by law, then this obligation to be void; otherwise to remain in full force and virtue.

JAMES M. STRICKLER. [SEAL.]
CORNELIUS J. MAHAR. [SEAL.]
SAM'L A. HUTCHINS. [SEAL.]
JULIUS HEDGE. [SEAL.]
ANDREW S. HUGHES. [SEAL.]

Attest: W. C. KINGSLEY,
Probate Judge.

24 TERRITORY OF COLORADO, }
Arapahoe County. }

Cornelius J. Mahar, Samuel Hutchins, Julius Hedge, and Andrew S. Hughes, being first duly sworn, on their oaths depose and say each for himself that he is worth the sum set opposite his name and has property to that amount liable to execution and attachment in said Territory over and above sufficient to pay their respective debts and liabilities.

CON. J. MAHAR. $10,000.
S. A. HUTCHINS. $10,000.
JULIUS HEDGE. $10,000.
ANDREW S. HUGHES. $10,000.

Subscribed and sworn to before me this 9th day of March, A. D. 1874.

W. C. KINGSLEY,
Probate Judge.

In the matter of the estate of Thos. M. Sloan, deceased.
Bond of executor.
Approved by me and filed in the probate court of Arapahoe county this 9th day of March, A. D. 1874.
[SEAL.] W. C. KINGSLEY,
Probate Judge.

Recorded in Deed Record No. 2, page 504.

And thereupon the said James M. Strickler filed herein his oath as such administrator; which said oath is in the words and figures following, to wit:

(This paper is mutilated.—K. P. M., D. C.)

TERRITORY OF COLORADO, }
Arapahoe County, } *ss:*

I do swear that this writing contains the last will and testament of the within-named Thomas M. Sloan, deceased, so far as I know or believe, and that I will well and truly execute the same
25 by paying first the debts and then the legacies mentioned therein as far as his goods and chattels will thereunto extend and the law charges me, and that I will make a true and perfect inventory of all such goods and chattels, rights and credits, * * * hands or knowledge, * * * (The paper was torn.) * * * belonging to the estate of the said deceased, and render * * * of my administratorship with the will annexed when thereunto required by law to the best of my * * * so help me God.

JAMES M. STRICKLER.

* * * Sworn to before me on this ninth day of March, * * *

W. C. KINGSLEY,
Probate Judge.

Endorsed: Will, etc.
In the matter of the estate of Thos. M. Sloan, deceased.
Oath of Jas. M. Strickler, adm'n'r *cum testamento annexo*.
Filed 9th March, A. D. 1874.

W. C. KINGSLEY,
Probate Judge.

And afterwards, on, to wit, the 9th day of March, A. D. 1874, the following order was had and entered of record in said court, to wit:

In the Matter of the Estate of THOMAS M. SLOAN, Deceased.

And now, to wit, on this 9th day of March, A. D. 1874, comes John W. Horner and George H. Mills, the persons nominated in the last will and testament of said deceased as the executors thereof, and present and file herein their resignation, in and by which they and each of them decline to qualify as such executors; and thereupon come Sarah A. Sloan, widow, and Amanda S. Lock-
26 wood, William B. Sloan, Ann E. Sherrill, Louisa C. Mills, and Thomas R. Sloan, children and heirs-at-law of said deceased, and present and file herein their relinquishment, by which they and each of them decline to act as administrator with the will annexed of the estate of said deceased, and praying the court here to appoint James M. Strickler, Esq., administrator with the will annexed of the estate of said deceased; and thereupon comes Fred. A. Driscoll, a creditor of said deceased, and presents and files herein a relinquishment of his right to administer upon the estate of said deceased, and praying the court here to appoint James M. Strickler, Esq., as administrator with the will annexed of the estate of said deceased. Thereupon, the court being advised in the premises, it is ordered by the court that the said James M. Strickler be, and he is hereby, appointed administrator with the will annexed of the estate of said deceased, and that he give bond in the sum of thirty thousand two hundred dollars, conditioned as required by law and with sureties to be approved by the court; and thereupon comes the said James M. Strickler and presents his bond as such administrator with the will annexed in the sum of thirty thousand two hundred dollars, with Con. J. Mahar, Samuel A. Hutchins, Julius Hedge, and Andrew S. Hughes as sureties therein, which said bond is approved by the court, attested by the judge of this court, and filed herein; and the said James M. Strickler having taken and subscribed the oath required by law as such administrator, it is ordered by the court that letters of administration with the will annexed issue to the said James M. Strickler on the estate of said deceased, and it is accordingly done.

And thereupon there issued out of said court, under the
27 hand and seal of the judge thereof, letters of administration with the will annexed of Thomas M. Sloan, deceased, to James M. Strickler, which said letters are recorded in Documentary Record No. 2, at pages 504 and 505, of the records of said court, and are in the words and figures following, to wit:

Copy Letter of Administration cum Testamento Annexo.

TERRITORY OF COLORADO, } *sct:*
Arapahoe County, }

The people of the Territory of Colorado to all to whom these presents shall come, Greeting:

Know ye that whereas Thomas M. Sloan, late of the county of Arapahoe and Territory of Colorado, died on or about the thirteenth day of February, A. D. 1874, as it is said, after having duly made and published his last will and testament, a copy whereof is hereunto annexed, leaving at the time of his death property in this Territory which may be lost, destroyed, or diminished in value if speedy care be not taken of the same; and inasmuch as it appears that George H. Mills and John W. Horner, who were appointed executors in and by said last will and testament, here in writing refused to accept said trust, and that the widow and all the heirs-at-law and next of kin and creditors have all relinquished their right to be appointed administrators with the will annexed, and it appearing that James M. Strickler, of said county, has been chosen by said widow and next of kin and is a fit and proper person to manage said estate, and to the end that the said property may be preserved for those who shall appear to have legal right or interest therein, and that said will may be executed according to the request of the said testator—

We do hereby authorize him, the said James M. Strickler,
28 administrator with the will annexed, as such to collect and secure all and singular the goods and chattels, rights and credits, which were of the said Thomas M. Sloan at the time of his decease, in whos-oever hands or possession the same may be found, in this Territory, and well and truly to perform and fulfil all such duties as may be enjoined upon him by the said will, so far as there shall be property and the law charge him, and in general to do and perform all other acts which now are or hereafter may be required of him by law.

Witness William C. Kingsley, probate judge for the said county of Arapahoe, at his office, in Denver, this ninth day of March, A. D. 1874.

[L. S.] WILLIAM C. KINGSLEY, [SEAL.]
Probate Judge.

In re estate of Thomas M. Sloan, deceased. Copy.
Letter of adm'n *cum testamento annexo.* Issued 9th day of March, A. D. 1874.

W. C. KINGSLEY,
Probate Judge.

Deed Record No. 2, pages 504, 505, inclusive.

And afterwards, on, to wit, the thirtieth day of March, A. D. 1874, the following order was had and entered of record in said court, to wit:

In the Matter of the Estate of THOMAS M. SLOAN, Deceased.

And now, to wit, on this thirtieth day of March, A. D. 1874, comes James M. Strickler, administrator with the will annexed of the estate of said deceased, and presents to the court here an inventory of said estate; and the court having inspected and examined
29 said inventory, it is ordered that the same be filed and recorded herein, which is accordingly done.

And afterwards, to wit, upon the thirtieth day of March, A. D. 1874, comes James M. Strickler and files herein the inventory in said estate; which said inventory is recorded in Documentary Record 2, at pages 533 to 540, inclusive, of the records of said court, and is in the words and figures following, to wit:

Inventory.

TERRITORY OF COLORADO, } ss:
Arapahoe County, }

Inventory of all and singular the real and personal estate, goods, chattels, monies, credits, and effects which were of Thomas M. Sloan at the time of his decease.

Real Estate.

(Description.)	Value.
Lots number- one and two (1 and 2) of the S. W. ¼ of section number 31, township 3 south of range 68 west, being laid out and platted as Lakeville, situated in Arapahoe county, Colorado Territory, containing 157 acres. The west 57 acres are subject to an encumbrance by mortgage to F. A. Driscol for am'ts about $2,500. At present all of the 157 acres is under lease to Henry Leining and John Kippenburger for the term of five years from date, November 8, 1871. Title by pre-emption (U. S. patent). Value above encumbrance	$3,000 00
Twelve hundred acres of land situated in O'Brien county, in the State of Iowa, the precise description and title by which the name is held as well as the value thereof being unknown. Value, as near as can be estimated	1,500 00
30 Improvements on the S. E. ¼ of section 36, township 3 S. of R. 69 west (being a school section), situated in Jefferson county, Colorado Territory, consisting of fencing and plowing. Estimated value	100 00

Personal Estate.

Cash on hand	46 90

Goods and Chattels.

One-half interest in a lot of ice in ice-house at Lakeville, Colorado Territory. Valuation, about	400 00
One family carriage	100 00
One horse	75 00
One spring wagon	75 00
One mower	30 00
One hay-rake	20 00
One plow	6 00
One harrow	5 00

(*Description—Goods and Chattels.*)

One lot store fixtures, placed in the hands of J. S. Adair, at Pueblo, for sale by deceased. Estimated value	25 00
Improvements on lots 4 and 5, in block No. 3, West Denver, Arapahoe county, Colorado Territory, consisting of a two-story addition to frame house known as "Sloan house," claimed by deceased and also by W. D. M. Davis adversely, the precise nature of deceased's claim being unknown. Estimated value, with perfect title	600 00
Household and kitchen furniture, consisting of two bedsteads, one cook stove, one parlor stove, two 31 tables, one dozen chairs, three carpets, two feather beds, quilts, comforts, blankets, sheets, pillows, and dishes, etc., etc.	125 00

Securities, Certificate of Stock, Etc.

One certificate for one share of stock in the Jefferson County Irrigating Ditch Company. Par value	100 00
One certificate for one share of stock in the Table Mountain Water Company, Jefferson county, Colorado Territory. Par value	100 00
	100 00

Promissory Notes, Due Bills, Etc.

Note of C. S. Van Doren, dated Pueblo, October 27, '73, payable one day after date to order of deceased; amount, $22.77; no interest stipulated. "Doubtful"	22 77
Note Arthur Coleman, dated Pueblo, June 2, '73, payable to order of deceased nine days after date for amount, $12.00; no interest. "Doubtful"	12 00
Note of G. W. King, dated Pueblo, October 7, '73, payable 30 days after date to order of deceased for amount, $13.00; interest at two per cent. per month. "Doubtful"	13 00
Note of Henry Melo, dated Denver, January 11, '66, payable to order of deceased for amount, $50.00; no interest. "Doubtful"	50 00

32 Note of John G. Sloan, dated Newton, March, 1860, for amount, $200.00, payable to order of deceased, with interest at 6 per cent. per annum; the maker of this note deceased. "Desperate" 200 00

Note of D. G. Sconton, dated Denver, June 27, '65, for amount, $42.00, payable to deceased or bearer one day after date; no in'st stipulated; cr. by am'ts, $12.00; bal., $30.00. "Desperate" 30 00

Note James M. Taggart, dated Denver, February 16, '65, for am'ts $12.00, payable 10 days after date to dec'd or bearer; no in'st stipulated. Desperate 12 00

Note of J. W. Devo, dated Denver, Col., March 23, '72, for am'ts $41.00, payable to dec'd or bearer one day after date, with in'st at 2 per cent. per mo. Desperate 41 00

Due bill of Edward Orpen, dated Denver, June 12, '71, for am'ts $11.29, payable to dec'd on demand; no in'st stipulated. Desperate 11 29

Note of C. J. Root, dated Denver, May 25, '72, for am't $100.00, payable to dec'd or bearer 10 days after date, with interest at 2 per cent. per mo.; maker dec'd and est. believed to be insolvent. Desperate 100 00

Note of H. W. Christopher, dated Denver, Col., March 23, '72; am'ts $15.50, payable to dec'd 60 days after date; no in'st stipulated. Desperate 15 50

Note William H. Winson, dated Denver, Col., Feb'y 16, '72, for $191 $\frac{55}{100}$, payable to dec'd or bearer 30 days after date, with in'st at 2 per cent. per mo. Desperate 191 55

33 Note Jose Manuel Serno (Mexican), dated June 16, '69, for am'ts $5.00, payable to dec'd 3 days after date, with in'st at 3 per cent. per mo. Desperate 5 00

Note of Henry Melo, dated Jan'y 11, '66, payable to dec'd or bearer, for am'ts $75.00, 10 days after date, with in'st at 10 per cent. per mo. Desperate 75 00

Note of Rob't Brown, dated July 12, 1871, for am'ts $9.12, payable to dec'd or bearer 3 ds. after date, with in'st at 2 per cent. per mo. Desperate 9 12

Agreement of Solo. Thompson & Susie Shines, dated Pueblo, July 24, '73, whereby they promise to pay dec'd or bearer $199.51 in the following manner: $50 cash, $40 x on 31st July, 1873; $40 Aug'st 7, '73; $40 14th Aug'st, 1873, and $29.50 on the 21st Aug'st, '73, with in'st at 2 per cent. per mo. a ter maturity. Credit by cash $50 July 24, '73; bal. of prin. due. Doubtful. 149 50

Note signed by Henry Leining & John Kippenburger, dated Denver, May 9th, '72, for am't $75, payable to Jas. Adams or bearer 90 ds. after date, with interest at 2 per cent. per mo.; endorsed pay to Strickler & Mahar; Jas. Adams, per T. M. Sloan, ag't; placed in their hands for collection and returned to administrator as not collected. Desperate 75 00

Orders for Payment of Money.

Order A. H. Netlefield, dated Aug'st 21st, '66, on Mahony & Bearins for $425 x, payable to dec'd. Desperate ---- 425 00

34 Order J. D. Crafton, dated June 15, '66, on Jas. L. Bailey for $26.00, payable to dec'd. Desperate- 26 00

Order of R. A. Huel, dated Sept. 18th, 1871, to B. Cornforth for $18.75, payable to order of dec'd. Desperate- 18 75

Order Gilford Buell (or Buddica) on Ward (at California stable), dated Pueblo, May 17, '73, for $15.00, payable to dec'd. Desperate ---- 15 00

Order of Chas. Curl, dated Feb'y 16, '67, on W. Rasley, payable to bearer, for $4.00, in hands of dec'd. Desperate ---- 4 00

Order W. B. Warren, dated Aug'st 18th, '71, on Nice & Cramer for am't $22.90, payable to dec'd or bearer. Desperate ---- 22 90

Book Ac'ts.

Ac't against John M. Turner; am't balance due Aug'st 31st, 1872. "Desperate" ---- 34 85

Account against "Parker Anderson;" am't due Aug. 31st, 1872. "Desperate" ---- 14 00

Account against "J. H. Christopher;" am't due Feb'y 26th, 1872, $22.40, less cr. $4.00. "Desperate" ---- 18 00

Account against "James M. Smith;" am't due Aug. 21st, 1872, $15.09, less cr. $7.2 . "Desperate" ---- 7 84

Account against "Geo. C. McCartney;" amount due July 18th, 1872. "Desperate" ---- 20 00

Account against "John Foyst;" bal. due Aug. 31, '72, $33.20, less cr. $10.00. "Desperate." ---- 23 20

35 *Bills, Memorandums, &c.*

The following "bills" drawn, found among papers of deceased, and no book yet found containing ledger or other account of same:

Ac't against "Rocky Mountain Brewery"; balance due Sept. 30th, 1871. "Desperate" ---- $1,116 89

Ac't against William Johnson; balance due 1869. "Desperate" ---- 120 06

Bills, Memorand's, &c., Continued (on Next Page).

Ac't against James H. Steen, dated June 20th, 1871; amount. "Desperate" ---- 7 00

Ac't against Horace H. Gates, dated Nov. 14, 1871; balance. "Desperate" ---- 3 00

Ac't against W. J. Stanton, dated Dec. 11th, 1871; balance. "Desperate" ---- 8 20

(*Bills, Memorandas, &c., Continued.*)

Ac't against Miss Molly Kirwin, dated Feb'y 5th, 1866; amount. "Desperate"---- 19 25

Ac't against Henry Wilson, dated Aug. 30th, 1871; amount. "Desperate"---- 8 30

Ac't against Mr. —. Stein, dated Pueblo, February 17th, 1873; balance. "Desperate"---- 8 00

Ac't against C. Bissel "alias" M. Bassey, dated August 23d, 1872; amount. "Desperate"---- 25 80

Ac't against F. Shelby, dated Dec. 4th, 1871; balance. "Desperate"---- 16 00

Ac't against Richard Smith, dated Nov. 31st, 1871; amount. "Desperate"---- 37 40

Ac't against H. H. Petersgill, dated Aug. 21st, 1872; amount. "Desperate"---- 11 00

36 Ac't against D. Keer, dated November 24th, 1871; amount. "Desperate"---- 27 75

Ac't against I. E. Webster and M. S. Webster, dated March 19th, 1872; am't. "Desperate"---- 21 00

Ac't against Charles Stobie, dated Nov. 24th, 1871; amount. "Desperate"---- 31 35

Ac't against William Rea, dated May 4th, 1872; balance. "Desperate"---- 21 05

Ac't against Thomas Harvey, dated July 29th, 1871; balance. "Desperate"---- 38 28

Ac't against William Florence, dated Aug. 31st, 1872; amount. "Desperate"---- 31 95

Receipt of O. H. Whittier, given "deceased" for note for collection against A. B. Case; date of note, Aug. 31st, 1872; in'st 2 per cent. per month. "Desperate"---- 90 00

Pueblo.

Ac't against Mrs. Carry Ford, dated March 31, '73, $29.80; April 21st, '73, $5.50. "Desperate"---- 35 30

Ac't against Frank Starr, Dec. 30, '72, $35.40; Jan'y 20, '73, $69.96. "Desperate"---- 105 36

Ac't against Mollie Reynolds, Jan'y 27, '73; balance. "Desperate"---- 1 50

Ac't against Alex. Redfield, dated Aug. 25, '73; amount. "Desperate"---- 4 50

Ac't against Louis Iles, dated July 8, '73; amount. "Desperate"---- 16 50

Ac't against Jeremiah Hogan, dated June 3, '73; amount. "Desperate"---- 12 50

Ac't against Mrs. E. Weldy, dated March 31, '73; balance. "Desperate"---- 7 60

37 Ac't against Geo. Howard & Co., "National house," March, 1873; balance. "Desperate"---- 99 77

Ac't against J. M. Thompson; no date; amount. "Desperate"---- 17 00

Ac't against Mr. —— Holmes, dated Nov. 12, '72; amount. "Desperate"	2 50
Ac't against Y. Allen, dated Jan'y 6, '73, Denver; balance. "Desperate"	18 19
Account against Alex. Laughlin, dated May 22, '73; balance. "Desperate"	1 50
Ac't against J. B. Campbell, dated March 31, '73; amount. "Desperate"	4 45
Ac't against James Brison, dated March 31, '73; balance. "Desperate"	8 85
Ac't against E. Eastman, dated Octo. 18, '73; amount. "Desperate"	100 00
Ac't against Earinghouse & Bear, dated April 30, '73; balance. "Desperate"	2 00
Ac't against Harry E. Pickard, dated Oct. 9, '73; amount. "Desperate"	250 00
Ac't against Peter Kuhr, dated Sept. 4, '73; balance. "Desperate"	72 00
Ac't against S. S. Linn, dated Aug. 25, '73; amount. "Desperate"	12 50
Ac't against Lelo Thompson, dated Aug. 28, '73; balance. "Desperate"	10 00
Ac't against C. Ploseda, dated March 31, '73; am't. "Desperate"	12 00
Ac't against Miss Josefa Pino, dated Feb'y 26, '73; am't. "Desperate"	15 90
Ac't against Mrs. Vincent, dated June 3, '73; am't. "Desperate"	4 80
Ac't against Lenora Clifford, dated Feb'y 3, '73; am't. "Desperate"	44 00
38 Ac't against John Genna, dated Feb'y 3, '73. "Desperate"	8 25
Ac't against Albert & Bros., dated March 3, '73; am't. "Desperate"	20 40
Ac't against Wm. W. Deval, dated March 31, '73; balance. "Desperate"	60 85
Ac't against Francisco Pomaho, dated July 23, '73; balance. "Desperate"	2 43
Ac't against Pauline Brace, dated June 3, '73; am't. "Desperate"	2 00
Ac't against Rafeel Lopees, dated March 31, '73; am't. "Desperate"	6 00

The above is a correct inventory of all the estate of said deceased which has come to the hands, sight, knowledge, or possession of the undersigned up to the date of this inventory. The undersigned has been informed that there are certain books of account relating to business transactions in Pueblo, Colorado, of the deceased, but he has been unable after diligent investigation and inquiry to ascertain correctly the truth of such information. He therefore prays leave, should he subsequently discover the existence of the same or

any other property not herein enumerated, to return a supplemental inventory of the same.

JAMES M. STRICKLER,
Administrator.

TERRITORY OF COLORADO, } ss:
Arapahoe County, }

I, James M. Strickler, administrator of all and singular the goods and chattels of Thomas M. Sloan, deceased, do hereby certify that the foregoing is a true and correct inventory of all and singular the real and personal estate, goods, chattels, rights, credits, and effects which were — of Thomas M. Sloan at the time of
39 his decease, so far as the same has come to my hands, sight, knowledge, or possession.

Given under my hand and seal this 28th day of March, 1874.

J. M. STRICKLER, [SEAL.]
Administrator.

Endorsed.

In re estate Thomas M. Sloan, dec'd.
Inventory. Filed 30th M'ch, '74.

W. C. KINGSLEY,
Probate Judge.

And afterwards, on, to wit, the 1st day of May, A. D. 1874, the following order was had and entered of record in said court, to wit:

In the Matter of the Estate of THOMAS M. SLOAN, Deceased.

And now, to wit, on this first day of May, A. D. eighteen hundred and seventy-four, comes James M. Strickler, administrator with the will annexed of the estate of said deceased, and presents to the court here the bill of appraisement of the assets of estate.

And thereupon the court, having examined said appraisement bill and being advised in the premises, it is ordered that the same be filed and recorded herein, which is accordingly done.

And afterwards, to wit, upon the first day of May, A. D. 1874, came the appraisers heretofore appointed by the court and returned their bill of appraisement; which said appraisement is recorded in Documentary Record No. 2, at page 628, of the records of
40 said court, and is in the words and figures following, to wit:

TERRITORY OF COLORADO, } ss:
Arapahoe County, }

The people of the Territory of Colorado to John Good, Robert S. Wilson, and L. Bradford, of the county of Arapahoe and Territory of Colorado, Greeting:

This is to authorize you jointly to appraise the goods, chattels, and personal estate of Thomas M. Sloan, late of the county of Arapahoe and Territory of Colorado, deceased, so far as the same shall come to your sight and knowledge, each of you having first taken

the oath hereunto annexed, a certificate whereof you are to return annexed to an appraisement bill of said goods, chattels, and personal estate by you appraised, in dollars and cents; and in the said bill of appraisement you are to set down in a column or columns, opposite to each article appraised, the value thereof.

Witness William C. Kingsley, probate judge for the said county of Arapahoe, at his office in Denver, this first day of May, A. D. 1874.

WILLIAM C. KINGSLEY,
Probate Judge. [SEAL.]

TERRITORY OF COLORADO, } ss:
Arapahoe County, }

You and each of you do solemnly swear that you will well and truly, without partiality or prejudice, value and appraise the goods, chattels, and personal estate of Thomas M. Sloan, deceased, so far as the same shall come to your sight and knowledge, and
41 that you will in all respects perform your duty as appraisers to the best of your skill and judgment.

JOHN GOOD.
ROB'T S. WILSON.
L. BRADFORD.

Subscribed and sworn to before me by R. S. Wilson and L. Bradford this first day of May, A. D. 1874.

JAMES F. WATSON,
Notary Public.

Subscribed and sworn to before me by John Good this thirtieth day of April, 1874.

W. C. KINGSLEY,
Probate Judge.

In re estate of Thomas M. Sloan, deceased.
Grant of appraisement.
Granted to John Good, Rob't Wilson, and L. Bradford first day of May, A. D. 1874.

W. C. KINGSLEY,
Probate Judge.

Recorded in Documentary Record, Book No. 2, on page 627.

Bill of Appraisement of All and Singular the Goods and Chattels Which Were of Thomas M. Sloan at the Time of His Decease.

Description.	Appraised value.
One-half interest in a lot of ice in ice-house at Lakeville, Colorado Territory, valuation about	$320 00
One family carriage	40 00
One horse (hot here)	
One spring wagon	3 00
One mower	2 00

	One hay-rake	5 00
42	One plow	0 25
	One harrow (no harrow)	

One lot store fixtures placed in the hands of J. S. Adair at Pueblo for sale by deceased. Estimated value

Improvements on lots 4 and 5, in block No. 3, West Denver, Arapahoe county, Colorado Territory, consisting of a two-story addition to frame house known as "Sloan house," claimed by deceased and also by W. D. M. Davis adversely, the nature of deceased's claim being unknown. Estimated value, with perfect title

Household and kitchen furniture, consisting of two bedsteads, one cook-stove, one parlor stove, two tables, one dozen chairs, three carpets, two feather beds, quilts, comforts, blankets, sheets, pillows, and dishes, etc 100 00

TERRITORY OF COLORADO, } ss:
Arapahoe County, }

We, the undersigned, having been first duly appointed and sworn as per the annexed oath and warrant, do hereby certify that the foregoing is a true and perfect bill of appraisement, in dollars and cents, of all and singular the goods and chattels which were of the said Thomas M. Sloan at the time of his decease so far as the same has come to our sight or knowledge, and that we have appraised the same according to the best of our skill and judgment.

Given under our hands and seals on this first day of May, A. D. 1874.

LARKIN BRADFORD, [SEAL.]
ROB'T S. WILSON, [SEAL.]
JOHN GOOD, [SEAL.]
Appraisers.

43 *In re* estate of Thomas M. Sloan, deceased.
Appraisement. Filed May 1st, 1874.
W. C. KINGSLEY,
Probate Judge.

Recorded in Documentary Record, Book No. 2, on page 628.

And afterwards, to wit, upon the ninth day of May, A. D. 1874, came James M. Strickler, administrator aforesaid, and filed in said court his petition; which said petition is recorded in Documentary Record No. 2, at page 640, and is in the words and figures following, to wit:

TERRITORY OF COLORADO, }
Arapahoe County. }

In the Probate Court.

In the Matter of the Estate of THOMAS M. SLOAN, Deceased.

To the judge of said court:

The petition of James M. Strickler, administrator of the estate of said deceased, respectfully represents unto said court that the goods and chattels belonging to said estate can be disposed of to *proper* advantage at private than at public sale on account of the nature of such goods and chattels, the largest amount of the same as to the value consisting of an interest in a large quantity of ice, such interest being an undivided one-half of the same, and that, in the opinion of your petitioner, not more than one-half the value of such goods could be obtained by a sale at public auction.

Wherefore the petitioner prays that he may be authorized and directed to sell the goods and chattels belonging to said estate at private sale.

JAMES M. STRICKLER,
Administrator.

44 TERRITORY OF COLORADO, } *ss:*
Arapahoe County, }

James M. Strickler, being first duly sworn, on his oath says that he has read the foregoing petition and knows the contents thereof, and that the statements therein contained are true, as he verily believes.

JAMES M. STRICKLER.

In re Sloan estate.
Petition to sell at private sale.
Filed 9th May, '74, and recorded in Documentary Record, Book 2, page 640.

W. C. KINGSLEY,
Probate Judge.

And afterwards, on, to wit, the 9th day of May, A. D. 1874, the following order was had and entered of record in said court, to wit:

In the Matter of the Estate of THOMAS M. SLOAN, Deceased.

And now, to wit, on the ninth day of May, A. D. eighteen hundred and seventy-four, comes James M. Strickler, administrator with the will annexed of the estate of said deceased, and presents and files herein his petition showing to the court that the goods and chattels belonging to said estate can be disposed of to greater advantage at private than at public sale on account of the nature of such goods and chattels, and praying that he may be authorized to sell the said goods and chattels at private sale.

And thereupon, the court having read and inspected the said peti-

tion, and being satisfied of the facts stated therein, and being advised in the premises, it is ordered by the court that the said administrator sell at private sale the said goods and chattels of the estate of said deceased for cash in hand, and at not less than the appraised value thereof.

45 And afterwards, to wit, upon the 18th day of June, A. D. 1874, came Wm. N. Byers, a publisher, and filed herein proof of the publication of notice of said administrator for the settlement and adjustment of claim against the said estate; which said proof of publication is recorded in Documentary Record No. 3, at page 32, of the records of said court, and is in the words and figures following, to wit:

TERRITORY OF COLORADO, } ss:
County of Arapahoe, }

I, Wm. N. Byers, of said county of Arapahoe, do hereby certify that I am the publisher and proprietor of the Rocky Mountain News, a daily newspaper printed and published in Denver, in said county and Territory; and I further certify that the notice, of which the annexed is a true copy, has been published in said newspaper for thirty successive days and 30 times, and that the first publication of said notice was in said paper bearing date the fourteenth day of May, A. D. 1874, and the last publication of said notice was in said paper bearing date the eighteenth day of June, A. D. 1874.

It witness whereof I have hereunto set my hand this eighteenth day of June, A. D. 1874.

WM. N. BYERS.

Legal Notice.

TERRITORY OF COLORADO, } ss:
County of Arapahoe, }

In the Probate Court in and for said County.

In the Matter of the Estate of THOMAS M. SLOAN, Deceased.

Notice is hereby given that the subscriber, as administrator with the will annexed of said deceased, has fixed upon the 18th day of June, A. D. 1874, at the June term of said court, in said year,
46 *at* the time when all persons having claims against said estate shall present the same to said court for allowance and adjustment, when and where all persons are required to present their claims to said court against said estate; otherwise they will be deprived of all benefit and participation in the estate of said deceased.

JAMES M. STRICKLER,
Administrator with the Will Annexed of
Thos. M. Sloan, Deceased.

In re estate of Thomas M. Sloan.
Proof of publication by administrator. Filed June 18th, 1874.
W. C. KINGSLEY,
Probate Judge.

Recorded in Documentary Record No. 3, page 32.

And thereupon the following claims were presented against the said estate; which said claims are in the words and figures following, to wit:

Thomas M. Sloan in ac't Strickler & Mahar.

1873.			
	To am't fow'd		$407 76
M'ch 18.	" 1 show case	$30 00	
" 18.	" 1 spring bed	4 00	
			34 00
M'ch 19.	" 1 robe		5 00
" 19.	" 1 bbl. sugar, 290–20–270 lbs., at 14c.	37 80	
" 19.	" 1 box candles	9 25	
" 19.	" 1 box soap	3 25	
			50 30
	Am't of Barnum's bill		26 85
			$523 91

1873.	Cr.		
M'ch 31.	By amount order L. L. Higgins	44 65	
July 23.	" cash	125 00	
Aug. 18.	" do. d'ft	200 00	
			369 65
			$154 26

47 Thomas M. Sloan in a'ct with Strickler & Mahar.

1873.			
	To am't fow'd		$160 80
M'ch 17.	" 1 doz. caps	$3 00	
	" 1 do. stable frocks	2 75	
	" 2 do. brooms, $1.75	3 50	
	" 3 brackets, 25c.	75	
	" 1 doz. pan. bedsteads	84 00	
	" ½ doz. maps, at $6.25	3 13	
	" 2 do. dolls, 75c.	1 50	
	" 1 do. wash bowls	8 50	
	" 2 do. mirrors, $6.50	13 00	
	" 1½ doz. do. $9.00	7 50	
	" 1 box beeds	1 00	
	" 2 boxes hair switches	50	
	" ½ doz. whips, $5.00	2 50	
	" ½ do. do. $2.50	1 25	
	" 1 trunk	2 00	
	" 2 doz. comforts, $26	52 00	
	" 1 box flowers	50	
	" 1 lot silk	1 00	

To cad. tobacco, 19 lbs., 56c.	10 64		
" 1 box smo. tobacco, 25 lbs., 37c.	9 37		
" ½ doz. knives, at $6	3 00		
" ½ do. do. $6.75	3 37		
" 1 do. harmonicas	1 00		
" sett table knives, $2; 1 sett do., $1.50	3 50		
" 2 do., do., $1.50	3 00		
" 1½ doz. knives, $2.75; 2 doz. forks, $2.75	5 50		
" 1 doz. tea spoons	1 00		
" 4 do. table do., 1, $1.25; 3, 40c.	2 45		
" 2 doz. combs, $1.50; cigars, $2.25, $11.25	12 75		
" 2 doz. towels, $1.50	3 00		
		246	96
Am't forw'd		$407	76

48 Thomas M. Sloan in ac't with Strickler & Mahar.

1873.

M'ch 3. To 1 chest tea, 67–17, 50 lbs., @ 45c.		$22	50
" 15. To 1 spring bed	$4 00		
" 1 do.	4 00		
" 9 dinner plates	70		
" 8 pie plates	30		
" 5 feather pillows, 14 lbs., @ 55c.	7 70		
" 1 desk stool	75		
" 1 bedstead	6 25		
" 5 cane-seat chairs, $1.25	6 25		
" 1 enclosed washstand	2 50		
" 1 washstand	2 60		
" 1 mahog. bed	17 25		
" 1 bureau	7 00		
" 1 carpet lounge	9 75		
" 1 bureau	13 50		
" 1 panel bed	6 25		
" 5 cood. spreads	7 50		
" 1 grey blanket	5 40		
" 1 comfort	1 95		
" 1 do.	1 50		
" 1 do.	1 65		
" 1 Marseilles quilt	3 00		
" 1 do.	3 00		
" 1 pr. white blankets	5 20		
" 1 do.	5 20		
" 2 Mar. spreads	3 10		
" 1 side-table mirror	12 00		
		138	30
Amount forw'd		$160	80

Thomas M. Sloan.

TERRITORY OF COLORADO, } ss:
County of Arapahoe, }

James M. Strickler, of Strickler & Mahar, being duly sworn, on oath deposes and says that the annexed account against the estate of Thos. M. Sloan, deceased, is just, correct, and true, and the
49 sum of one hundred and fifty-four dollars and twenty cents is still due affiant and unpaid on said account after allowing all just credits.

J. M. STRICKLER.

Subscribed and sworn to before me this 18th day of June, A. D. 1874.

W. C. KINGSLEY,
Probate Judge.

In re estate of Thomas M. Sloan, deceased.
Claim of Strickler & Mahar, $154.20.
Filed eighteenth day of June, A. D. 1874.

W. C. KINGSLEY,
Probate Judge.

DENVER, COL., *May* 1, 1874.

The estate of Thomas M. Sloan, deceased, to George H. Mills, Dr.

1874.		
Feb'y 3.	Cash p'd county clerk for abstract	$2 15
" 6.	" " " " release mortgage	50
" 14.	Cash p'd city clerk for burial lot	12 30
" 14.	" " bill of barber for shaving deceased	5 00
" 20.	Sheriff on proof of will—for witness fees, $5.30; for sheriff's fees, $7.05	12 35
M'ch 10.	Cash paid Probate Judge W. C. Kingsley, his fees	25 70
		$58 00

TERRITORY OF COLORADO, } ss:
County of Arapahoe, }

George H. Mills, being duly sworn, deposes and says that the foregoing account is correct; that the moneys therein mentioned were necessarily and actually expended, and that he has not received pay for the same or any part thereof.

GEORGE H. MILLS.

Subscribed and sworn to before me this eleventh day of May, A. D. 1874.

W. C. KINGSLEY,
Probate Judge.

50 Arapahoe county probate court.
In the matter of the estate of Thomas M. Sloan, deceased.
Acc't of Geo. H. Mills. Filed June 18th, 1874.

W. C. KINGSLEY,
Probate Judge.

DENVER, COLORADO, *June 18th*, 1874.

Mr. Thos. M. Sloan (dec'd) bought of Smith & Doll, wholesale and retail dealers in furniture and upholstery, looking-glasses, bedding, coffins, metallic and rosewood burial cases, Blake street, near Fifteenth. Terms cash. A. N. Smith, Louis Doll.

Feb'y 19.	To 1 coffin and box	$65 00
	" grave and express	6 00
	" 1 hearse	10 00
	" 5 carriages at $6.00	30 00
		$111 00

TERRITORY OF COLORADO, } ss:
County of Arapahoe, }

Louis Doll, of the firm of Smith & Doll, being duly sworn, on oath deposes and says that the annexed account against the estate of Thomas M. Sloan, deceased, is just, correct, and true, and the sum of one hundred and eleven dollars and — cents is still due affiant and unpaid on said account after allowing all just credits.

LOUIS DOLL.

Subscribed and sworn to before me this 18th day of June, A. D. 1874.

JAMES F. WATSON,
Notary Public.

In re estate of Thomas M. Sloan, deceased.
Claim of Smith & Doll, $111.00. Filed 18th day of June, A. D. 1874.

WILLIAM C. KINGSLEY,
Probate Judge.

51 DENVER, COL., *Dec. 1st*, 1873.

Jas. M. Walker, M. D.; office, 356 Larimer bet. 14th and 15th.

Mr. T. M. Sloan to Dr. Walker, Dr.

All bills payable monthly or as soon as services are rendered.

To professional services from Nov. 12th to date, 18 visits.. $50 00
Prescriptions, as per reverse
To medicines, ten per cent., for services during last illness.

Rec'd pay't,

— —.

TERRITORY OF COLORADO, } ss:
County of Arapahoe, }

James M. Walker, being duly sworn, on oath deposes and says that the annexed account against the estate of Thomas M. Sloan, deceased, is just, correct, and true, and the sum of fifty dollars and

— cents is still due affiant and unpaid on said account, after allowing all just credits.

(Signed) JAMES M. WALKER.

Subscribed and sworn to before me this 18th day of June, A. D. 1874.

JAMES F. WATSON,
Notary Public.

In re estate of Thomas M. Sloan, deceased.

Claim of Dr. Jas. M. Walker, $50.00. Filed 18th day of June, A. D. 1874.

WM. C. KINGSLEY,
Probate Judge.

No. 20591.

DENVER, *May 29th*, 1874.

Estate of Thomas M. Sloan, dec'd, to W. D. Anthony, Dr.

Dec. 5, '73.	To drawing declaration and acknowledgment to same on map of Lakeville	$5 00
	To recording map of Lakeville	15 35
		$20 35

52 Estate of THOMAS M. SLOAN.

TERRITORY OF COLORADO, } ss:
County of Arapahoe, }

Webster D. Anthony, being duly sworn, on oath deposes and says that the annexed account against the estate of Thomas M. Sloan, deceased, is just, correct, and true, and the sum of twenty dollars and thirty-five cents is still due affiant and unpaid on said account, after allowing all just credits.

WEBSTER D. ANTHONY.

Subscribed and sworn to before me this 18th day of June, A. D. 1874.

JAMES I. WATSON,
Notary Public.

In re estate of Thomas M. Sloan, deceased.

Claim of W. D. Anthony, $20.35. Filed 18th day of June, A. D. 1874.

WM. C. KINGSLEY,
Probate Judge.

DENVER, *December* 4, 1873.

Thomas M. Sloan to Edwin H. Kellog, Dr.

For	making map of town of Lakeville	$15 00
"	" two tracings of above map at $5 each	10 00
		$25 00

TERRITORY OF COLORADO, } ss:
County of Arapahoe, }

Personally appeared before the undersigned, * * * in and for said county and Territory, Edwin H. Kellog, who makes oath that Thomas M. Sloan in his lifetime, now deceased, to wit, on the seventh day of December, A. D. 1873, was indebted to the affiant in the sum of twenty-five dollars ($25) for making map to town of Lakeville and making two (2) traces of said map; that said Thomas M. Sloan in his lifetime never paid the whole or any part of
53 said claim; that it is a just, correct, and legal claim against the estate of Thomas M. Sloan, deceased, after allowing all just and proper credits, and that affiant has not received any satisfaction for the whole or any part of said claim, and that no security has been given or received for the whole or any part of said claim, and that said claim still remains wholly unpaid and unsatisfied.

EDWIN H. KELLOG.

Sworn to and subscribed before me this the 18th day of June, A. D. 1874, as witness my hand and notary seal.

[SEAL.] VICTOR A. ELLIOTT,
Notary Public.

Edwin H. Kellogg. To ——. Proof of claim. Estate of Thomas M. Sloan, dec'd; $25. Filed 18th June, '74.

W. C. KINGSLEY, *P. J.*

Thomas M. Sloan in acc't with Horner & Harman, Dr.

Nov. 29, '73.	To writing deed from him and wife to Jno. Cressinger for property in Caledonia, Marion county, Ohio	$5 00
Dec. 2, '73.	To writing will for him and services rendered in mapping the addition to Lakeville	25 00
Dec. 2, '73		$30 00

TERRITORY OF COLORADO, } ss:
County of Arapahoe, }

Personally appeared before the undersigned, * * * in and for said county and Territory, Edwin P. Harman, one of the firm of Horner & Harman, who makes oath that Thomas M. Sloan in his lifetime, now deceased, was indebted to said firm of Horner & Harman on the second day of December, A. D. 1873, in the sum of thirty dollars ($30); that said Thomas M. Sloan in his life-
54 time never paid said sum of thirty dollars or any part thereof; that after allowing all just, legal, and proper credits the said sum of thirty dollars is a true, just, correct, and legal claim against the estate of Thomas M. Sloan, deceased, and that no security or satisfaction has been given or received for the whole or any part of the same.

EDWIN P. HARMAN.

Sworn to and subscribed before me this the 18th day of June, A. D. 1874.

JAMES F. WATSON,
Notary Public.

Horner & Harman *vs.* ——. Proof of claim. Estate of Thomas M. Sloan, dec'd; $30. Filed 18th June, '74.

W. C. KINGSLEY, *P. J.*

DENVER, COLORADO, *June 18th*, 1874.

Estate of Thomas M. Sloan to C. L. King, M. D., Dr., for services during last illness.

Nov. 12.	To treatment of Mr. T. M. Sloan	$4	00
	" gun catheter		75
" 14.	" treatment of T. M. Sloan	4	00
" 15.	" " " "	4	00
" 16.	" " " "	4	00
" 17.	" " " "	4	00
" 18.	" " " "	4	00
" 19.	" " " "	4	00
" 20.	" " " "	4	00
" 21.	" " " "	4	00
" 22.	" " " "	4	00
" 23.	" " " "	4	00
" 24.	" " " "	4	00
" 25.	" " " "	4	00
" 26.	" " " "	4	00
" 27.	" " " "	4	00
		$60	75
Nov. 28.	Credit by cash	25	00
		$35	76
June 24.	Credit by dis.	10	00
		$25	75

55 TERRITORY OF COLORADO, }
County of Arapahoe, } *ss:*

C. L. King, being duly sworn, on oath deposes and says that the annexed account against the estate of Thomas M. Sloan, deceased, is just, correct, and true, and the sum of thirty-five dollars and seventy-five cents is still due affiant and unpaid on said account after allowing all just credits.

C. L. KING, M. D.

Subscribed and sworn to before me this 18th day of June, A. D. 1874.

JAMES F. WATSON,
Notary Public.

Probate court will please allow the within bill; am't, $25.75.
J. M. STRICKLER,
Administrator.

In re estate of Thomas M. Sloan, deceased. Claim of Dr. C. L. King, $35.75—$25.75. Allowed 25th June, 1874. Filed 18th day of June, A. D. 1874. Wm. C. Kingsley, probate judge.

And afterwards, on, to wit, the eighteenth day of June, A. D. 1874, the following order was had and entered of record in said court, to wit:

In the Matter of the Estate of THOMAS M. SLOAN, Deceased.

Now, on this eighteenth day of June, A. D. eighteen hundred and seventy-four, comes James M. Strickler, administrator with the will annexed of said deceased, and presents and files herein the notice to creditors by him given as such administrator, fixing this day for the presentation of claims against said estate, which said notice is duly certified by the publisher and proprietor of the "Rocky Mountain News," a daily and weekly newspaper printed and published in the city of Denver, in the county of Arapahoe and
56 Territory of Colorado, to have been published in the daily issue of said paper for thirty successive days and thirty times, and the first publication of said notice was in said paper bearing date the thirteenth day of May, A. D. eighteen hundred and seventy-four, and the last publication of said notice was in said paper bearing date the sixth day of June, A. D. eighteen hundred and seventy-four.

And thereupon comes James M. Walker and presents and files herein his claim against said estate, amounting to the sum of fifty dollars, and the same being proved by the oath of said James M. Walker, and the same appearing to be just and correct and no objection being interposed thereto, it is ordered by the court that said claim be allowed and be paid in the due course of administration of said estate and be classed in the second class of claims against said estate.

And thereupon come Smith and Doll and present and file herein their claim against said estate, amounting to the sum of one hundred and eleven dollars, and the same being proved by the oath of Louis Doll, and the same appearing to be just and correct and no objection being interposed thereto, it is ordered by the court that said claim be allowed and be paid in due course of the administration of said estate and be classed in the first class of claims against said estate.

And thereupon comes Webster D. Anthony and presents and files herein his claim against said estate, amounting to the sum of twenty dollars and thirty-five cents, and the same being proved by the oath of the said Webster D. Anthony, and the same appearing to be just and correct and no objection being interposed thereto, it is ordered by the court that said claim be allowed and be paid in the due

course of the administration of said estate and be classed in the fourth class of claims against said estate.

57 And thereupon comes George H. Mills and presents and files herein his claim against said estate, amounting to the sum of fifty-eight dollars, and the same appearing to be just and correct and being proved by the oath of said George H. Mills and no objection being interposed thereto, it is ordered by the court that said claim be allowed and be paid in the due course of administration of said estate; that of said claim the sum of seventeen dollars and thirty cents be classed in the first class of claims against said estate; that of said claim the sum of thirty-eight dollars and five cents be classed in the second class of claims against said estate, and that of said claim the sum of four dollars and sixty-five cents be classified in the fourth class of claims against said estate.

And thereupon comes Horner and Harman and present and file herein their claim against said estate, amounting to thirty dollars, and the same being proved by the oath of Edwin P. Harman, and the same appearing to be just and correct and no objection being interposed thereto, it is ordered by the court that said claim be allowed and be paid in the due course of administration of said estate and be classed in the fourth class of claims against said estate.

And thereupon comes E. H. Kellogg and presents and files herein his claim against said estate, amounting to the sum of twenty-five dollars, and the same being proved by the oath of the said E. H. Kellogg, and the same appearing to be just and correct and no objections being interposed thereto, it is ordered by the court that said claim be allowed and be paid in the due course of administration of said estate and be classed in the fourth class of claims against said estate.

58 And thereupon come Strickler and Mahar and present and file herein their claim against said estate, amounting to the sum of one hundred and fifty-four dollars and twenty cents, and the same being proved by the oath of the said James M. Strickler, and the same appearing to be just and correct and no objections being interposed thereto, it is ordered by the court that said claim be allowed and be paid in due course of administration of said estate and be classed in the fourth class of claims against said estate.

And thereupon comes C. L. King and presents and files herein his claim against said estate, amounting to the sum of thirty-five dollars and seventy-five cents, and objection being interposed thereto, it is ordered by the court that the hearing of this said claim be continued to Saturday, June twentieth instant, at ten o'clock a. m.

And afterwards, to wit, upon the twenty-fifth day of June, A. D. 1874, the following order was had and entered of record in said court, to wit:

In the Matter of the Estate of THOMAS M. SLOAN, Deceased.

Now, on this twenty-fifth day of June, A. D. eighteen hundred and seventy-four, comes James M. Strickler, administrator with the

will annexed of said deceased, and C. L. King in person also comes; and thereupon the claim of said C. L. King against said estate, amounting to thirty-five dollars and seventy-five cents, heretofore filed herein, was called up; and thereupon the said C. L. King here in open court consents that said claim be reduced in amount to the sum of ten dollars, and that said claim be allowed to the amount of twenty-five dollars and seventy-five cents; and thereupon, said claim being proved by the oath of said C. L. King, and the same appearing to be just and correct and no objection being interposed thereto, it is ordered by the court that said claim be allowed
59 to the amount of twenty-five dollars and seventy-five cents, to be paid in the due course of the administration of said estate and be classed in the second class of claims against said estate.

And afterwards, to wit, upon the fifth day of June, A. D. 1875, the following claim was filed in the clerk's office of said court; which said claim is in the words and figures following, to wit:

DENVER, *November* 1, 1875.

The estate of Thomas M. Sloan to B. F. Charlton, Dr.

For removing the remains of John G. Sloan at the City cemetery, said remains having been erroneously placed in the roadway ---------- $25 00

TERRITORY OF COLORADO, } *ss.*:
County of Arapahoe, }

George H. Mills, being duly sworn, on oath deposes and says that the annexed account against the estate of Thomas M. Sloan, deceased, is just, correct, and true, and the sum of twenty-five dollars and — cents is still due affiant and unpaid on said account after allowing all just credits.

GEORGE H. MILLS.

Subscribed and sworn to before me this fifth day of June, A. D. 1875.

JAMES F. WATSON,
Deputy Clerk Probate Court.

I hereby waive any and all notice of the presentation of the within claim, and consent that the same may be allowed.
June 25th, 1875.

J. M. STRICKLER,
Administrator for Estate T. M. Sloan, Dec'd.

In re estate of Thomas M. Sloan, deceased. Claim of B. F. Charlton, $25.00. Filed June 5, 1875.

W. D. ANTHONY, *Clerk, and* WATSON, *Deputy.*

60 And afterwards, on, to wit, the fifth day of June, A. D. 1875, the following order was had and entered of record in said court, to wit:

In the Matter of the Estate of THOMAS M. SLOAN, Deceased.

Now, on this day, comes B. F. Charlton, and presents and files herein his account and claim against said estate, amounting to the sum of twenty-five dollars; and thereupon comes James M. Strickler, Esq., administrator of the estate of said deceased, and endorses on said claim his waive of the notice required by law of the presentation of said claim, and also his consent that the same may be allowed; and thereupon, the said claim being duly proved to the satisfaction of the court, and no objections being interposed thereto, and the same appearing to be just and correct, it is ordered by the court that the said account and claim be allowed and paid in the due course of the administration of said estate and be classified in the fourth class of claims against said estate.

And afterwards, to wit, upon the twenty-eighth day of October, A. D. 1875, the following claim was filed in the clerk's office of said court; which said claim is in the words and figures following, to wit:

DENVER, COL., *October* 28, 1875.

M—— Estate of T. M. Sloan bought of N. O. Vosburgh & Co., steam cracker works, corner Blake and Nineteenth streets. N. O. Vosburgh, F. W. Crocker.

1873.			
February 8.	6 box-, $2.40, Graham cracker-, 260 lbs., 10c.--	$28	40
	Interest to date at 10 per cent., 2 yrs. 9 mos.--	7	80
54, 38, 39, 37, 53, 39—260 lbs.		$36	20

61 TERRITORY OF COLORADO, } ss:
Arapahoe County, }

N. O. Vosburgh, being duly sworn, on oath deposes and says that the annexed account against the estate of Thomas M. Sloan, deceased, is just, correct, and true, and the sum of thirty-six dollars and twenty cents is still due affiant and unpaid on said account after allowing all just credits.

N. O. VOSBURGH.

Subscribed and sworn to before me this 28th day of October, A. D. 1875.

JAMES F. WATSON,
Deputy Clerk Probate Court.

I hereby waive any and all notice of the presentation of the within claim and consent that the same may be allowed.

JAMES M. STRICKLER,
Administrator with the Will Annexed.

In re estate Thomas M. Sloan, deceased. Claim of N. O. Vosburgh, $36.20. Filed 28th day of October, A. D. 1875.

W. C. LOTHROP, *Clerk*,
By JAS. F. WATSON, *Deputy*.

Allowed; fourth class.

AMOS STECK,
Probate Judge.

And afterwards, on, to wit, the twenty-eighth day of October, A. D. 1875, the following order was had and entered of record in said court, to wit:

In the Matter of the Estate of THOMAS M. SLOAN, Deceased.

Now, on this day, comes N. O. Vosburg and presents and files herein his account and claim, amounting to the sum of thirty-six and $\frac{20}{100}$ dollars, against the estate of said deceased, and the same appearing to be just and correct, and having been proved to the satisfaction of the court, and James M. Strickler, administrator with the will annexed of said estate, having expressly waived any and all notice of the time for the presentation of said claim, and no objection being interposed thereto, it is ordered by the court that the same be allowed and paid in the due course of the administration of said estate and classified in the fourth class of claims against said estate.

62

And afterwards, to wit, upon the third day of December, A. D. 1875, came the said James M. Strickler and filed with the clerk of said court a bill of sales made by him as administrator; which said list of sales is recorded in Documentary Record No. 5, at page 107, of the records of said court, and is in the words and figures following, to wit:

TERRITORY OF COLORADO, }
Arapahoe County. }

In the Probate Court.

To the Honorable Amos Steck, judge, &c.:

The undersigned, administrator with the will annexed of Thomas M. Sloan, dec'd, herewith submits the following report and list of sales of goods and chattels belonging to said estate:

Articles.	Am't sold for.
1 lot of ice	$58 88
1 black horse	23 00
1 old spring wagon, 1 plow, 1 mower, 1 hay-rake, and 1 old harrow	15 00
Sale of produce realized from rent of farm under lease by the deceased and turned over to undersigned—10,341 lbs. wheat at 235c., $243.08; less labor, sacking and delivering, $13.50	229 68
Am't hay sold	50 00
	$376 56

I certify the above to be a correct list of sales of goods and chattels belonging to the said estate.

JAMES M. STRICKLER,
Adm'n'r c. t. a. Thomas M. Sloan, Dec'd.

63 Estate of Thomas M. Sloan. List of sales. Filed Dec. 3rd, 1875.

W. C. LOTHROP, *Clerk*,
By JAS. F. WATSON, *Deputy.*

Recorded in Documentary Record, Book 5, page 107.

And afterwards, to wit, upon the same day, came the said James M. Strickler and filed herein his account as administrator, etc., with vouchers lettered from "A" to " P," inclusive; which said account is recorded in Documentary Record No. 5, at pages 108 and 109 of the records of said court; which said account and vouchers are in the words and figures following, to wit:

TERRITORY OF COLORADO, }
Arapahoe County. }

In the Probate Court.

Estate of THOMAS M. SLOAN, Deceased.

To the Honorable Amos Steck, judge of said court:

The undersigned, administrator with the will annexed of said deceased, herewith submits the following account of moneys received and disbursed on account of said estate:

James M. Strickler, adm'r *c. t. a.*, in ac't with estate of Thos. M. Sloan, dec'd.

DR.

This accountant charges himself with cash on hand at date of death	$46	90
Aug. 31, '75. To money realized from loan hereafter referred to	4,000	00
Nov. 26. To am't list of sales herewith reported	376	46
	$4,423	36

CREDITS.

This accountant takes credit for am't paid note and interest to F. A. Driscoll, assigned to Mrs. Mary Saylor, secured by deed of trust on real estate	$3,307	85
64 July 31. By am't paid George Tritch for fence wire, same being necessary to preserve est., as per voucher "A"	61	42
May 5th. By am't p'd George Tritch for fence wire, same being necessary to preserve est., as per voucher " B"	59	58

Sept.	2, '75.	By am't paid Smith & Doll, bill allowed by court, per voucher C	111 00
"		By am't paid Dr. J. M. Walker, bill allowed by court, per voucher D	55 00
"		By am't paid B. F. Charlton, bill allowed by court, per voucher E	25 00
Nov.	9.	By am't paid Geo. H. Mills, bill allowed by court, per voucher F	58 00
		By am't paid N. O. Vosburgh & Co., bill allowed by court, per voucher G	36 20
		By am't paid Strickler & Mahar, bill allowed by court, per voucher H	154 26
Oct.	16.	By am't paid W. D. Anthony, bill allowed by court per voucher I	20 35
		By am't paid do. recording fees, voucher J	4 10
	5.	By am't paid L. Bradford for appraiser's fees, voucher J	2 50
		By am't paid R. S. Wilson for appraiser's fees, voucher K	2 50
		By am't paid probate judge's fees, voucher L	43 80
		By am't paid Miller, Markham & Clough, attorneys' fees, per voucher M	100 00
		By am't paid taxes for the year 1874 as per voucher N	160 30
		By am'ts fees, Early's acknowledgment	1 00
		By (am't fees) for recording and for abstract	5 35
		By (am't fees) paid Horner & Harman, per voucher O	30 00
		By (am't fees) E. H. Kellog	25 00
			$4,263 21

65 The amount balance on hand, together with am'ts expected from receipts for produce from the farm, will be required to pay the interest on loan.

Credits	$4,423 36
Charges	4,263 21
Balance on hand	$160 15

For the said sum of $4,000 the undersigned was obliged to negotiate — a loan the portion of the real estate of the deceased which he was authorized to dispose of by the will, the same being actually necessary to preserve such estate from a sacrifice under said first-mentioned deed of trust to said Driscoll and the same being absolutely unsaleable for the real or actual value at the time of the negotiation of such loan, and that means being taken to preserve the estate.

The list of sales herewith reported were made by order of court heretofore had.

The undersigned was only able to sell the amount of ice reported in list of sales, the balance being destroyed by the flooding of the grounds whereon the ice-house in which the same was stored stood, by the trespass and digging of a canal by the Sloan Lake Steam Navigation Co., for which a suit was instituted and prosecuted to judgment in said court in behalf of undersigned and L. L. Higgins, owner of the other moyety, such trespass being committed at a time when it was impossible to remove the ice without total destruction.

The improvements reported as situated on lots 4 and 5, in block 3, West Denver, heretofore reported as belonging to deceased, are in fact the property of one W. D. M. Davis, subject to the right of deceased to pay the sum of about $800, claimed as rent, and
66 the same are unsaleable and worthless; and, inasmuch as the same are worthless and subject to the loan aforesaid, the undersigned prays that they may be stricken from the inventory and be no longer charged therewith.

There is also returned in inventory a lot of household and kitchen furniture, and also one family carriage; and the same having been bequeathed to the widow of said dec'd and turned over to her, the undersigned prays he may be discharged from further accounting therefor.

There was also a lot of store fixtures in Pueblo, in the hands of one J. S. Adair, auctioneer. Upon inquiry I have ascertained — were sold prior to the death of said dec'd, and the said Adair, in whose hands the proceeds were, has since deceased, and his estate is utterly insolvent and the claim, if any, uncollectible. The return in inventory was made upon information simply, and he prays that he may be relieved from further accounting therefor.

The ditch stock notes and accounts are on hands for inventory.

TERRITORY OF COLORADO, }
Arapahoe County. }

James M. Strickler, first being duly sworn, on his oath says that the foregoing report and account is true, just, and correct, as he verily believes.

JAMES M. STRICKLER.

Subscribed and sworn to before me this third day of December, A. D. 1875.

JAMES F. WATSON,
Deputy Clerk Probate Court.

In re estate Thomas M. Sloan, dec'd. Account of adm'r *c. t. a.* Filed Dec. 3, 1875.

W. C. LOTHROP, *Clerk*,
By JAS. F. WATSON, *Deputy*.

67 Recorded in Documentary Record, Book 5, page- 108 and 109.

DENVER, COLORADO, *July* 31, 1875.

J. M. Strickler, order, bought of George Tritch, wholesale and retail dealer in shelf hardware, iron, nails, steel, horse and mule shoes, carpenters' and mechanics' tools, mill machinery, fence wire, pumps, plows, engines, agricultural implements, shingle mills, saw-mills, circular saws, belting, cook and heating stoves, etc., etc., cor. Wazee and Fifteenth streets.

June 30. 13 bdls. 9 fence wire, 7½ $61 42

Paid.

GEO. TRITCH.
SON.

J. M. Strickler. Filed Dec. 3, 1875.

W. C. LOTHROP, *Clerk*,
By JAS. F. WATSON, *Deputy*.

DENVER, COL., *May* 1*st*, 1875.

Sloan estate, per J. M. Strickler, bought of George Tritch, wholesale and retail dealer in shelf hardware, iron, nails, steel, mule and horse shoes, mill machinery, fence wire, pumps and plows, shingle mills, saw-mills, circular saws, belting, and stoves, cor. Wazee and Fifteenth Sts.

Ap'l 28.	13 bdls. No. 9 fence wire, 819 lbs., 7	$57 33
	5 wire strainers, 21	1 25
	10 lb-. staples, 10	1 00
		$59 58

Paid May 5, 1875.

GEORGE TRITCH.
W.

"B." Filed Dec. 3, 1875.

W. C. LOTHROP, *Clerk*,
By JAS. F. WATSON, *Deputy*.

68 J. M. Strickler, for Sloan estate, $59.58.

Rec'd, Denver, Sept. 2, '75, of J. M. Strickler, administrator for est. of Thomas M. Sloan, one hundred and eleven dollars, in full for bill probated and allowed against said estate.

SMITH & DOLL.

"C." Filed Dec. 3, 1875.

W. C. LOTHROP, *Clerk*,
By JAS. F. WATSON, *Deputy*.

DENVER, COLO., *Jan.* 1, 1874.

M—— Estate of T. M. Sloan to Dr. Jas. M. Walker, Dr.; office, 356 Larimer street.

Bills payable monthly.

For professional services and medicines during last illness	$50 00
Interest one year	5 00
	$55 00

—— visits.
—— night visits.
—— prescriptions.

Received payment,

J. M. WALKER.

D. Filed Dec. 3, 1875.

W. C. LOTHROP, *Clerk*,
By JAS. F. WATSON, *Deputy*.

Rec'd, Denver, Sept. 2, '75, of J. M. Strickler, administrator for estate of Thos. M. Sloan, twenty-five dollars, in full for bill probated and allowed against said estate.

BENJAMIN F. CHARLTON.

E. Filed Dec. 3, 1875.

W. C. LOTHROP, *Clerk*,
By JAS. F. WATSON, *Deputy*.

$58.00. Received, Denver, Col., Nov. 9th, 1875, from J. M. Strickler, administrator of Thos. M. Sloan, deceased, the sum of fifty-eight dollars in full of claim against said estate allowed by the probate court of Arapahoe county.

GEORGE H. MILLS.

69 F. Filed Dec. 3, 1875.

W. C. LOTHROP, *Clerk*,
By JAS. F. WATSON, *Deputy*.

DENVER, COL., *October 28th*, 1875.

M—— Estate of T. M. Sloan bought of N. O. Vosburgh & Co., steam cracker works, corner Blake and Nineteenth streets. N. O. Vosburgh, F. W. Crocker.

1873.

February 8.	6 boxes, $2.40, Graham crackers, 260 lbs., 10c.	$28 40
	Int. to date at 10 per cent. (2 yrs. 9 mos.)	7 80
		$36 20

54, 38, 39, 39, 37, 53—260 lbs.

Rec'd pay't at the hands of J. M. Strickler, administrator. Duplicate.

N. O. VOSBURGH.

G. Filed Dec. 3, 1875.

W. C. LOTHROP, *Clerk*,
By JAS. F. WATSON, *Deputy*.

Rec'd, Denver, Nov. 9th, 1875, of James M. Strickler, adm'r for estate of Thos. M. Sloan, dec'd, one hundred fifty-four and $\frac{26}{100}$ dollars, in full for am't balance due on ac't for mdse., allowed by probate court.

STRICKLER & MAHAR.

H. Filed Dec. 3, 1875.

W. C. LOTHROP, *Clerk*,
By JAS. F. WATSON, *Deputy*.

DENVER, *October* 16*th*, 1874.

Estate of Thomas M. Sloan to W. D. Anthony, Dr.

In preparing and recording map of Lakeville ---------- $20 35

Received payment, J. M. Strickler, adm'r.

W. D. ANTHONY.

70 DENVER, *October* 16*th*, 1875.

Estate of Thomas M. Sloan to W. D. Anthony, Dr.

To rec'd No. 29054, Early to Sloan, release ----------	$1 60
" " " 29056, Sloan " Higgins, m'tg'e ----------	2 50
	$4 10

"I." Filed Dec. 3, 1875.

W. C. LOTHROP, *Clerk*,
By JAS. F. WATSON, *Deputy*.

Rec'd, Denver, Oct. 5, '75, of J. M. Strickler, administrator for estate Thos. M. Sloan, two and $\frac{50}{100}$ dollars, appraiser's fees.

L. BRADFORD.

"J." Filed Dec. 3, 1875.

W. C. LOTHROP, *Clerk*,
By JAS. F. WATSON, *Deputy*.

DENVER, *Nov. 9th*, 1875.

Received of James M. Strickler two $\frac{50}{100}$ dollars for appraiser's fees on estate of Thomas M. Sloan.

ROB'T S. WILSON.

"K." Filed Dec. 3, 1875.

W. C. LOTHROP, *Clerk*,
By JAS. F. WATSON, *Deputy*.

CLERK'S OFFICE, PROBATE COURT,
ARAPAHOE COUNTY, DENVER, *June 10th*, 1875.

Estate of Thomas M. Sloan, dec'd, to Probate Court, Dr.

To costs in said court in case of James M. Strickler, adm'r, &c., *vs.* The Boulevard and Sloan Lake Steam Navigation Co.	$34 55
Costs in the matter of the estate of said dec'd to date	9 25
	$43 80

Received payment,

JAS. F. WATSON, *Clerk.*

71 L. Filed Dec. 3, 1875.

W. C. LOTHROP, *Clerk*,
By JAS. F. WATSON, *Deputy.*

James M. Strickler, adm'r *c. t. a.* Thomas M. Sloan, dec'd, to Miller, Beck & Clough, Dr.

1875. To services as att'ys in probate court in settling estate said deceased and to services rendered in said court in case of Jas. M. Strickler, adm'r, etc., *vs.* Boulevard and Sloan Lake Steam Navigation Company	$100 00

Paid.

H. A. CLOUGH,
For M., B. & C.

M. Filed Dec. 3, 1875.

W. C. LOTHROP, *Clerk*,
By JAS. F. WATSON, *Deputy.*

Redemption Certificate No. 55.

TREASURER'S OFFICE,
Arapahoe County, Colorado Territory, } ss:

I hereby certify that the real estate hereinafter described, situate in the county of Arapahoe and Territory of Colorado, which was sold for delinquent special school taxes for the year 1873 on the 25th day of May, 1875, has this day been redeemed by Thomas M. Sloan, estate of, by the payment to me of the respective sums of money set opposite each tract, being the amount due thereon as provided by law, to wit:

Description of land redeemed.					Amount paid.	
Part of section or lot.	Section or block.	Township, town, or city.	Range, division, or addition.	No. of acres.	Dollars.	Cents.
N. E. ¼ of S. W. ¼	31	3	68		12	25
N. W. ¼ of S. W. ¼	31	3	68		12	25
S. W. ¼ of S. W. ¼	31	3	68		12	25
S. E. ¼ of S. W. ¼	31	3	68		12	25
Certificate and recording					1	40
					$50	40

72 In witness whereof I have hereunto set my hand and seal this 30th day of August, 1875.

J. M. STRICKLER, [SEAL.]
County Treasurer.

N. Certificate of redemption to Thomas M. Sloan, "estate of." Filed Dec. 3, 1875.

W. C. LOTHROP, *Clerk*,
By JAS. F. WATSON, *Deputy*.

TREASURER'S OFFICE,
ARAPAHOE COUNTY, *Aug. 30th*, 1875.

Received of est. of Thomas M. Sloan the sum of one hundred nine and $\frac{90}{100}$ dollars in full for county, territorial, school, deaf mute, interest on D. P. R. R. bonds, interest on D. and S. P. R. R. bonds, and interest on jail bonds, city tax, poll, and special school on the following property for the year 1874:

Lots.	Block.	Div.	Lots.	Block.	Div.	Description.	Acres.	Sec.	Town or range.
All.	1 to 14	Lakeville.							
"	16 to 19	"							
"	21 to 34	"							
"	36 to 38	"							
"	41 to 43	"							
	47 to 48	"							

County tax	$38 79
Territorial tax	6 46.5
School tax	15 08.5
Deaf mute tax	86.2
Int. on D. P. R. R. bonds	10 77.5
" " D. & S. P. R. R. b'ds	6 46.5
" " jail bonds	1 29.3
City tax	
Poll tax	

Special school tax No. 21 ..... 30 17
Interest .....
Advertising .....

Total $109 90
Total valuation of property $4,310

J. M. STRICKLER,
Treasurer of Arapahoe County.

73 Filed Dec. 3, 1875.

W. C. LOTHROP, *Clerk,*
By JAS. F. WATSON, *Deputy.*

DENVER, COLORADO, *Nov.* 29, '75.

Rece'd of J. M. Strickler, adm'r of Thomas M. Sloan, deceased, the sum of thirty dollars ($30), which is payment in full of our account probated against said estate.

HORNER & HARMAN.

"O." Filed Dec. 3, 1875.

W. C. LOTHROP, *Clerk,*
By JAS. F. WATSON, *Deputy.*

Rec'd, Denver, Nov. 9, '75, of J. M. Strickler, adm'r for estate of Thomas M. Sloan, dec'd, twenty-five dollars in full for ac't probated against said estate.

E. H. KELLOG.

"P." Filed Dec. 3, 1875.

W. C. LOTHROP, *Clerk,*
By JAS. F. WATSON, *Deputy.*

And afterwards, on, to wit, the 4th day of December, A. D. 1875, the following order was had and entered of record in said court, to wit:

In the Matter of the Estate of THOMAS M. SLOAN, Deceased.

Now, on this day, come- James M. Strickler, administrator with the will annexed of the estate of said deceased, and presents and files herein his account and report as such administrator, showing to the court here that he has received for and on account of said estate the sum of four thousand four hundred twenty-three and $\frac{36}{100}$ dollars, and that he has disbursed for and on account of said
74 estate the sum of four thousand two hundred sixty-three and $\frac{20}{100}$ dollars, leaving a balance in his hands belonging to said estate and subject to the order of this court of one hundred sixty and $\frac{16}{100}$ dollars; that for the sum of four thousand dollars he was obliged to negotiate a loan, a portion of the real estate of the deceased which he was authorized to dispose of by the will, the same being actually necessary to preserve such estate from the sacrifice under said first-mentioned deed of trust to one Driscoll, and the

same being absolutely unsalable for the real or actual value at the time of the negotiation of such loans, and that means being taken to preserve the estate.

The improvements reported as situated on lots 4 and 5, in block 3, West Denver, heretofore reported as belonging to said deceased are in fact the property of one W. D. M. Davis, subject to the right of deceased to pay the sum of about eight hundred dollars claimed as rent, and the same are unsaleable and worthless; and inasmuch as the same are worthless and subject to the loan aforesaid he prays that they may be stricken from the inventory and he be no longer charged with them. He further shows that there was returned in said inventory a lot of household and kitchen furniture and also one family carriage, and the same having been bequeathed to the widow of said deceased and turned over to her he prays that he may be discharged from further accounting therefor, and that there was also a lot of store fixtures in Pueblo in the hands of one J. S. Adair, auctioneer, and upon inquiry he has ascertained were sold prior to the death of said deceased, and the said Adair, in whose hands the proceeds were, has since deceased, and his estate is utterly insolvent and the claim, if any, uncollectible. The return in inventory was made upon information simply, and he prays that he may be relieved from further accounting therefor.

75 And thereupon, the court having read and inspected the said report and accounts, and being satisfied of correctness of same, and being fully advised in the premises, it is ordered by the court that the same be allowed and filed herein, and it is accordingly done.

And afterwards, to wit, upon the 15th day of January, A. D. 1877—present, Amos Steck, judge of the county court, county of Arapahoe and State of Colorado, and who also elects to perform the duties of clerk of said court, and David J. Cook, sheriff of Arapahoe county—the following notice of claim and claim were filed in said court; which said notice of claim and claim are in the words and figures following, to wit:

STATE OF COLORADO, } ss:
Arapahoe County, }

In the County Court, of the January Term, A. D. 1877.

WALTER HIGGIN
vs.
ESTATE OF THOMAS M. SLOAN, Deceased.

Notice of Claim.

To James M. Strickler, Esq., administrator with will, etc., of said estate:

Please take notice that on Monday, the fifteenth day of January, A. D. 1877, at the incoming of said court on that day or as soon thereafter as counsel can be heard, we shall exhibit for the approval

of said court a claim of the said Walter Higgin against said estate, of which the following is a copy:

$4,000. DENVER, COL. TER., *August 31st*, 1875.

"One year after date, as administrator with the will annexed Thos. M. Sloan, dec'd, I promise to pay to Walter Higgin or order the sum of four thousand dollars, for value received, negotiable and payable, without defalcation or discount, at the First National
76 Bank in Denver, Colorado, with interest at the rate of one and one-half per cent. per month from date until paid, interest to be paid every three months.

(Signed) JAMES M. STRICKLER,
Administrator with Will Annexed
Thomas M. Sloan Deceased."

At which time and place you can attend and take such action thereon as you see fit.

CHARLES & DILLON,
Attorneys for Claimant.

DENVER, COLORADO, *January 4th*, 1877.

Rec'd a copy of above notice this 4th day of January, A. D. 1877.

J. M. STRICKLER,
Administrator as Aforesaid.

In re estate of Thos. M. Sloan, deceased.
Notice of claim of Walter Higgins. Filed Jan. 15, 1877.
AMOS STECK.

CHARLES & DILLON,
Attorneys for Claimant.

G. W. Kassler, Denver, Colorado, booksellers, stationers, and newsdealers.

(Cut.)

$4,000. DENVER, COL. TER., *August 31st*, 1875.

One year after date I, as administrator with the will annexed Thos. M. Sloan, dec'd, promise to pay to Walter Higgin or order the sum of four thousand dollars, for value received, negotiable and payable, without defalcation or discount, at the First National Bank in Denver, Colorado, with interest at the rate of one and a half per cent. per month from date until paid, interest to be paid every three months.

No. —. Due —.

JAMES M. STRICKLER,
Administrator with the Will Annexed
Thomas M. Sloan, Deceased.

Received Dec. 13, '75, one hundred and eighty dollars, 3 mo-' interest on within.

W. HIGGINS. $180.

Rec'd M'ch 13, '75, one hundred and eighty dollars, 3 mos.' int.
WALTER HIGGINS.

77 STATE OF COLORADO, } ss:
Arapahoe County, }

Henry C. Dillon, being duly sworn, on oath deposes and says that the annexed claim of Walter Higgin against the estate of Thomas M. Sloan, deceased, is just, correct, and true, and the sum of four thousand six hundred and thirty dollars is still due said Walter Higgin and unpaid on said claim after allowing all just credits.
HENRY C. DILLON.

Subscribed and sworn to before me this 15th day of January, A. D. 1875.
AMOS STECK,
County Judge.

In re estate of Thomas M. Sloan, deceased. Claim of Walter Higgin, $4,630.00. Filed 15th day of January, A. D. 1877.

—— ——,
County Judge.

Allowed, 4th class, in the sum of 4,660 this 2nd Feb'y, 1877.
AMOS STECK,
Probate Judge.

And afterwards, to wit, upon the 2nd day of February, A. D. 1877, comes James M. Strickler and files herein his report and voucher; which said report and voucher are in the words and figures following, to wit:

STATE OF COLORADO, } ss:
Arapahoe County, }

To the judge of the county court of Arapahoe county, —— term, A. D. 1877:

The undersigned, James M. Strickler, administrator with the will annexed of the estate of Thomas M. Sloan, deceased, would respectfully submit to the court the following report of his acts and doings as such administrator from Dec'r 3rd, 1875, to Feb'y 3rd, A. D. 1877: I charge myself with the following, to wit:

Date.	Items of receipts.	Amount.	Total am't, Dolls. Cts.
1875.			
Dec'r 3.	To balance cash on hand for first account rendered	$160 15	
78			
1876.			
May 8.	To amount received from sale of hay and fodder	22 00	
July 14.	To amount received from sale of certificate of ditch stock	85 00	
Oct. 12.	To amount received from sale of hay	24 00	
	Total amount of money received or collected		$291 15

CONTRA.

I ask to be credited with the following payments to creditors of deceased, as per vouchers herewith submitted:

Date.	Items paid out.	Amount.	Total am't.
1875.			
Dec'r 13.	By interest paid Walter Higgins on note and mortgage from Oct. 13th, Dec'r 13th, 1875, the same being credited on note and no voucher taken	$180 00	
1876.			
Jan'y 19.	By amount paid for taking and acknowledging second released deed from Joseph R. Early	1 00	
M'ch 13.	By interest paid Walter Higgins on note and mortgage from Dec'r 13, '75, to M'ch 13, '76, the same being credited on said note and no voucher taken	180 00	
June 1.	By amount taxes paid on realty belonging to said estate for the year 1875, voucher A	94 35	
79			
1877.			
Jan'y 29.	By amount taxes paid on realty belonging to said estate for the year 1876, voucher B	74 17	
Feb'y 2.	Fees paid Kinsley for probate	11 65	
	Fees paid Amos Steck, county judge	10 00	
	Amount allowed J. M. Strickler, adm'r, by order of county judge in probate	500	
			1,051 17
			$1,051 17
Feb'y 2, 1877.	Balance due accountant		760 02

Recapitulation.

	Dolls. Cts.
Total amount received	291 15
" " paid out	1,051 17

Balance due.

July 2, 1877. Bal. due administrator with will, &c. 759 92

All of which is respectfully submitted.

JAMES M. STRICKLER,
Administrator with the Will Annexed of the Estate of Thomas M. Sloan, Deceased.

STATE OF COLORADO, } ss:
Arapahoe County, }

James M. Strickler, adm'r with will annexed of Thos. M. Sloan, deceased, being duly sworn, say- that the foregoing is a full and correct account of all his dealings and transactions and of all moneys and effects received and paid out by him as such adm'r from Dec. 3d, 1875, to the 2nd day of February, A. D. 1877.

JAMES M. STRICKLER.

Subscribed and sworn to before me this 2nd day February, A. D. 1877.

AMOS STECK,
County Judge.

80 Report of the account of J. M. Strickler, adm'r with will annexed of the estate of Thos. M. Sloan, deceased. Filed the 2nd day of Feb'y, A. D. 1877, and recorded in Probate Record A, page 8.

AMOS STECK,
County Judge.

Approved by me this — day of ——, A. D. 18–.

——,
County Judge.

Filed Feb. 2, 1877.

AMOS STECK.

TREASURER'S OFFICE, ARAPAHOE COUNTY, *June* 1, 1876.

Received of Thomas M. Sloan, est. of, the sum of ninety-four and $\frac{35}{100}$ dollars, by J. M. Strickler, admin'r, in full for county, territorial, school, deaf-mute, interest on D. P. R. R. bonds, interest on D. & S. P. R. R. bonds, and interest on jail bonds, city tax, poll, and special school on the following property for the year 1875:

Lot.	Block.	Div.	Description.	Sec.	Town.	Range.
			All of S.W. ¼, known as Lakeville.	31	3	68

County tax	$21 25	Int. on jail bonds	$2 12
Territorial	6 37	City tax	
School tax	14 88	Poll tax	
Deaf-mute tax	85	Special school No. 2	25 50
Interest on D. P. R. R. bonds	14 88	Interest	
		Advertising	
Int. on D. & S. P. R. R. bonds	8 50	Total	94 35

Total valuation of property, $4,250.

J. M. STRICKLER,
Treasurer of Arapahoe County.

Voucher on acc't of date of Feb'y 2, 1877. Filed Feb. 2. 1877.
AMOS STECK.

81 TREASURER'S OFFICE, ARAPAHOE COUNTY, *Jan'y* 29, 1877.

Received of Thomas M. Sloan, est. of, the sum of seventy-four and $\frac{17}{100}$ dollars, by J. M. Strickler, adm'r, in full for county, State, school, deaf-mute, interest on D. P. R. R. bonds, interest on D. & S. P. R. R. bonds, and interest on jail bonds, city tax, poll, and special school on the following property for the year 1876:

Lot.	Block.	Div.	Description.	Sec.	Town.	Range.
			All of S.W. ¼ subdivided and known as Lakeville.	31	3	68

County tax	$23 67	Int. on jail bonds	$1 31
State tax	3 94	City tax	
School tax	9 21	Poll tax	
Deaf-mute tax	53	Special school tax No. 2.	21 04
Int. on D. P. R. R. bonds	9 21	Interest	
Int. on D. & S. P. R. R. bonds	5 26	Advertising	
Total			74 17

Total valuation of property, 2,630.+

J. M. STRICKLER,
Treasurer of Arapahoe County.

And afterwards, to wit, upon the 2nd day of February, A. D. 1877, the following order was had and entered of record in said court, to wit:

In the Matter of the Estate of THOMAS M. SLOAN, Dec'd.

Now comes the administrator with the will annexed of Thomas M. Sloan, deceased, praying for a disposition of the several promissory notes, accounts, shares of stock, and chooses in action, setting forth the insolvency of the several persons who are debtors respectively in said petition mentioned and the worthlessness of the same and the shares of stock, also all set forth in said petition.

82 And it appearing to the court that the suggestions of the petitioner is true in fact, and that the said notes, accounts, shares of stock, and other choses in action are worthless and of no avail whatever, it is ordered, adjudged, and decreed that all and several the promissory notes, accounts, shares of stock, and all other chooses in action mentioned and described in said petition be sold and assigned by the said administrator at public or private sale, as the said administrator may elect, with or without notice, public or private, or any sum or sums of money whatsoever to any person or persons whosoever and for any price or sum of money whatever he, the said administrator, may be able to get for the same, or the said administrator may, in his discression, assign all the said promissory notes.

And afterwards, to wit, upon the 21st day of February, A. D. 1877, came J. M. Strickler, administrator, &c., and filed herein his

petition for the sale of real estate; which said petition is in the words and figures following, to wit:

STATE OF COLORADO, } ss:
Arapahoe County, }

In the County Court of said County, to the March Term Thereof, A. D. 1877.

To the Hon. Amos Steck, judge of the county court of said Arapahoe county:

The petition of James M. Strickler, of the said county of Arapahoe, administrator with the will annexed of the goods, chattels, and effects of Thomas M. Sloan, late of said county, deceased, respectfully represents—

That your petitioner was, on the ninth day of March, in the year of our Lord one thousand eight hundred and seventy-four, duly appointed by the probate court of said Arapahoe county, in the
83 then Territory of Colorado, administrator with the will annexed of the goods and chattels, rights and credits, of the said Thomas M. Sloan, deceased, as will appear by his letters of administration on the hearing of this petition.

And your petitioner further shows that he has filed in the county court of said county as such administrator his inventory and the appraisement bill and sale bill of the estate of said deceased, and has also rendered to said court a just and true account of the personal estate and debts of the said deceased, as will more particularly appear, reference being had thereto, and that all the available portions of said personal estate have by your petitioner been disposed of and the residue thereof reported to said county court as worthless and uncollectible, and your petitioner has been by said court discharged therefrom, as will more particularly appear by referring to the records of said county court in this matter.

And your petitioner further shows that the amount of the personal estate of said deceased, according to the inventory and appraisement thereof, was four hundred and seventy dollars and — cents; that the amount received from all sales of said personal estate amount- to the sum of five hundred and seven (507) dollars and forty-six cents, and that the residue thereof is without any value whatever, as will more particularly appear by the reports of your petitioner heretofore made in this behalf and now on file in said county court, and that the whole amount of money received by your petitioner as such administrator from all sources is forty-five hundred and fifty-four dollars and thirty-six cent-, as will also appear by said reports, and that he has paid out in the course of his duties as such administrator the sum of forty-eight hundred and fourteen dollars and thirty-eight cents, and has faith-
84 fully applied such part of the personal estate and the proceeds thereof as have come to his possession towards the payment of the debts of said deceased.

And your petitioner further represents that the amount of debts and claim allowed against the estate of said deceased and still un-

paid is fifty-four hundred and forty-five dollars and seventy-five cents, and that the amount of such debts and claims still existing and not allowed, so far as the same are known to your petitioner, is two hundred and sixty dollars and — cents.

And your petitioner further shows that the legacies bequeathed by the said deceased consisted wholly of real estate, excepting the family carriage and household goods and the bequest of three thousand dollars hereinafter mentioned, and were as follows, to wit:

To Sarah A. Sloan, widow of deceased, the southeast quarter of section number thirty-six (36), in township three (3) south, of range sixty-nine (69) west, situate in Jefferson county, in the said State of Colorado; also block thirty-eight (38), in Lakeville, being a portion of section thirty-one (31), in township three (3) south, of range sixty-eight west; also all and singular the household goods and family carriage aforesaid.

To William B. Sloan, eldest son of deceased, block two (2), in said Lakeville.

To Callie Sloan, granddaughter of said deceased and daughter of said William B. Sloan, block number eighteen (18), in said Lakeville.

To Laurie Sloan, daughter of said William B. Sloan, block number seventeen (17), in said Lakeville.

To Edward Sloan, son of said William B. Sloan, block number forty-eight (48), in said Lakeville.

To Burtie Sloan, son of said William B. Sloan, block thirty-nine (39), in said Lakeville.

85 To William Ottaway Sloan, son of said William B. Sloan, block thirty-one (31), in said Lakeville.

To Amanda S. Lockwood, daughter of deceased, block thirty-six (36), in said Lakeville; also the money due the said estate by Platte Lockwood, deceased, being three thousand dollars, more or less.

To Analiza Sherrill, daughter of deceased, blocks eight (8) and sixteen (16), in said Lakeville.

To Ella Sherrill, daughter of said Analiza Sherrill, block nine (9), in said Lakeville.

To Kate Sherrill, daughter of said Analiza Sherrill, block number twenty-one (21), in said Lakeville.

To Eddie Sherrill, son of said Analiza Sherrill, block twenty-eight (28), in said Lakeville.

To Charlie Sherrill, son of said Analiza, block twenty-nine (29), in said Lakeville.

To Louisa Cordelia Mills, daughter of deceased and wife of George H. Mills, blocks three (3), four (4), five (5), six (6), and seven (7), in said Lakeville, and twelve hundred and twenty (1,220) acres of land, situate in O'Brien county, in the State of Iowa.

To Thomas R. Sloan, son of deceased, the east part of the northwest quarter of section number thirty-one (31), in township three (3) south, of range sixty-eight west, containing thirty-eight (38) acres, more or less, situate in said Arapahoe county, and blocks one (1) and twelve (12), in Lakeville aforesaid.

And your petitioner further shows that the said deceased died

possessed of the following-described real estate in fee simple, situate in the county of Arapahoe and State of Colorado, to wit:

The said twelve hundred and twenty (1,220) acres of land
86 in O'Brien county, Iowa, as aforesaid; the southeast quarter of section thirty-six (36), in township three (3) south, of range sixty-nine (69) west, situate in Jefferson county and State of Colorado;

Thirty-eight acres, more or less, in the east part of the northwest quarter of section number thirty-one (31), in township three (3) south, of range sixty-eight (68) west, situate in said Arapahoe county, blocks one (1) to forty-eight (48), inclusive, being all of Lakeville, in said county of Arapahoe and State of Colorado, as per plat thereof on file in the office of the clerk and recorder of said Arapahoe county; but your petitioner has thus far been unable to find the said Iowa lands; is informed and believes that said section thirty-six (36), in said Jefferson county, is a school section, and that said deceased never had any title whatever thereto, and that the title to said thirty-eight acres in said section thirty-one (31), in Arapahoe county aforesaid, was not in said deceased at the time of his death, as will more fully appear on the final hearing of this petition.

The said lots and blocks being laid out as an add-tion or suburban village to the city of Denver, in said Arapahoe county; but your petitioner is advised and believes a good farm was spoiled by so doing, and the residue of said lands being best adapted to farming, but as to the value of said parcel of land your petitioner is unable to fix a value thereon by reason of the stagnation now existing in the market for such real estate.

And your petitioner further shows that the following parcels of said real estate are incumbered in manner and form as hereinafter stated, to wit: Blocks one (1), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), twenty (20), twenty-two
87 (22), twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), thirty (30), thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), thirty-seven (37), forty (40), forty-one (41), forty-two (42), forty-three (43), forty-four (44), forty-five (45), forty-six (46), and forty-seven (47), all situated in Lakeville aforesaid, by mortgage of your petitioner, as administrator as aforesaid, to one Walter Higgins to secure the payment of four thousand dollars, money borrowed by your petitioner of said Higgins to pay the then existing debts due and owing from said estate on the thirty-first day of August, A. D. 1875, for one year, and payable August 31, A. D. 1876, with interest at the rate of one and one-half per cent. per month until paid, upon which default has been made by said estate and upon *when* is now due about the sum of forty-seven hundred dollars, the use and purpose of said loan being more fully set forth in your petitioner's said reports, to which reference is invited.

And your petitioner further shows that by virtue of a certain execution issued out of the district court of said Arapahoe county, dated November 22nd, A. D. 1875, at the suit of H. H. Kuhlenbeck and Elijah E. Parsons against the said Analiza Sherrill, the said blocks

eight (8) and sixteen (16) of said Lakeville were by the sheriff of said Arapahoe county levied upon and sold in accordance with the form of the statute in such case made and provided, and that afterwards your petitioner, in order to protect the said Analiza Sherrill and give to her an opportunity to redeem the same and in order also to keep the said deceased's estate together, bought the said sheriff's certificate of sale under said execution, and the said sheriff afterwards, on the 22nd day of September, A. D. 1876, issued
88 and executed to your petitioner his deed to the said blocks eight and sixteen, in said Lakeville, and that your petitioner paid for said deed the sum of — dollars and — cents.

And your petitioner further shows that the said Louisa Cordelia Mills, devisee as aforesaid, on the 22nd day of November, A. D. 1875, executed her deed of trust to Daniel Witter, as trustee, for the use and benefit of Emmet Wells, of the said blocks three (3), four (4), five (5), six (6), and seven (7), in said Lakeville, to secure to said Wells the payment of five hundred and fifty dollars in two years from the date last aforesaid, with interest at eighteen per cent. per annum.

That the said Ella Sherrill, on the fifteenth day of April, A. D. 1876, executed her trust deed to Wilbur C. Lothrop, as trustee, for the use and benefit of your petitioner, of the said block nine (9), in said Lakeville, to secure the payment of seventy-five dollars in one year after the date last aforesaid, with interest thereon at eighteen per cent. per annum.

That the said Sarah A. Sloan, on the eighteenth of November, A. D. 1876, executed her trust deed to Mitchell Benedict, as trustee, for the use and benefit of James K. Doolittle, of the said block thirty-eight (38), in said Lakeville, to secure the payment of fifty-two dollars and thirty-five cents in six months after the date last aforesaid, with interest thereon at eighteen per cent. per annum.

And your petitioner further shows that the said sheriff's deed and each of said trust deeds were executed and recorded subsequent to said mortgage to said Higgins; that they and each of them were executed and delivered with full notice of said mortgage to the several parties thereto; that they and each of them are subject
89 to the payment of the debts aforesaid; that they and each of them are incumbrances upon the expectancies only of the said several devisees and heirs in said deeds mentioned under said will, and that no distribution of the legacies aforesaid has yet been made to said devisee or to any of them.

And your petitioner further shows that personal estate of said deceased is insufficient to pay the just claims against the said estate, as will appear more particularly by proofs now on file in said county court on the final hearing upon this petition, and that the amount now needed to pay the said claims is fifty-four hundred and forty-five dollars and seventy-five cents.

And your petitioner further represents that the said Thomas M. Sloan, deceased, died leaving him surviving his widow, Sarah A. Sloan, and the following-named children and grandchildren as aforesaid, William B. Sloan, Callie Sloan, Laurie Sloan, Edward

Sloan, Burtie Sloan, William Ottaway Sloan, Amanda S. Lockwood, Analiza Sherrill, Ella Sherrill, Kate Sherrill, Eddie Sherrill, Charlie Sherill, Louisa Cordelia Mills, and Thomas R. Sloan, as his only heirs-at-law; that the said Callie Sloan, Laurie Sloan, Edward Sloan, Burtie Sloan, William Ottaway Sloan, Ella Sherrill, Kate Sherrill, Eddie Sherrill, and Charlie Sherrill are minors for whom no guardians have as yet been appointed, as your petitioner is informed and believes, all of which said parties, to wit, Sarah A. Sloan, William B. Sloan, Callie Sloan, Laurie Sloan, Edward Sloan, Burtie Sloan, William Ottoway Sloan, Amanda S. Lockwood, Analiza Sherrill, Ella Sherrill, Kate Sherrill, Eddie Sherrill, Charlie Sherrill, Louisa Cordelia Mills, Thomas R. Sloan, Daniel Witter, Emmet Wells, Wilbur C. Lothrop, Mitchell Benedict, and James K.
90 Doolittle, and such other parties to your petitioner unknown, who may be occupants of said real estate or any part thereof, are hereby made parties defendant hereto.

Wherefore, in consideration of the premises, your petitioner prays the aid of the court, and that he may have leave to sell the said real estate or so much thereof as may be necessary to pay the debts of the said intestate, and in the following order:

First. That portion mortgaged to the said Walter Higgins as aforesaid or so much thereof as may be necessary.

Secondly. The residue of said real estate situate in said Arapahoe county and State of Colorado aforesaid.

And that your honor will grant such other and further relief in the premises as may be just and agreeable to equity.

And that guardian *ad litem* may be appointed for said minor heirs.

And your petitioner will ever pray, etc.

JAMES M. STRICKLER,
Administrator, etc.

In re Thomas M. Sloan, deceased. Petition to sell real estate. Filed Feb. 21, 1877.

AMOS STECK, *Probate Judge.*
CHARLES & DILLON, *Att'ys.*

And thereupon the said James M. Strickler makes affidavit as to the no'-residence of defendant heirs; which said affidavit is in the words and figures following, to wit:

STATE OF COLORADO, } ss:
Arapahoe County, }

In the County Court of said County, to the March Term, A. D. 1877.

JAMES M. STICKLER, Administrator, etc., }
vs. }
SARAH A. SLOAN and Others. }

Petition to sell realty.

91 James M. Strickler aforesaid states on oath that, to the best of his knowledge and belief, the said Sarah A. Sloan, William

B. Sloan, Callie Sloan, Laurie Sloan, Edward Sloan, Burtis Sloan, William Ottaway Sloan, Analiza Sherrill, Ella Sherrill, Kate Sherrill, Eddie Sherrill, Charlie Sherrill, Louisa Cordelia Mills, and Emmet Wells, defendants to said petition, are non-residents of the said State of Colorado, and that the said defendant Thomas R. Sloan's residence is unknown to him and cannot be found so that process can be served upon him.

JAMES M. STRICKLER,
Adm'r, etc.

Sworn to and subscribed before me this 17th day of February, A. D. 1877.

AMOS STECK,
County Judge.

In re Thomas M. Sloan, deceased. Affidavit of James M. Strickler as to non-resident defendant heirs.
Filed Feb. 21, 1877.

AMOS STECK, *Probate Judge.*
CHARLES & DILLON, *Att'y-.*

And thereupon there issued out of said court a summons under the hand and seal of the judge thereof; which said summons is in the words and figures following, to wit:

STATE OF COLORADO, } ss:
Arapahoe County, }

The people of the State of Colorado to the sheriff of said county, Greeting:

We command you that you summon Amanda S. Lockwood, Thomas R. Sloan, Daniel Witter, Wilber C. Lothrop, Mitchell Benedict, James K. Doolittle, and Emmet Wells, if they shall be found in your county, personally to be and appear before the county
92 court of said Arapahoe county, in probate, on the first day of the next term thereof, to be holden at the court-house, in Denver, in said Arapahoe county, on the first Monday of March, 1877, to answer unto the petition of James M. Strickler, administrator, etc., of the estate of Thomas M. Sloan, deceased, on the return day hereof; which said petition was filed in our said court on the twenty-first day of February, A. D. 1877, and prays that this court will order and direct the sale of real estate of said deceased for the payment of debts.

And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness Hon. Amos Steck, judge of our said court, and the seal thereof, at Denver aforesaid, this twenty-first day of February, A. D. 1877.

[SEAL.] AMOS STECK, *Judge.*

Court summons to answer petition for sale of real estate. Arapahoe county court.

James M. Strickler, administrator of the estate of Thomas M. Sloan, deceased, *vs.* Amanda S. Lockwood *et als.*

And afterwards, to wit, upon the 23rd day of February, 1877, come the sheriff and filed herein the summons heretofore issued, with his return thereon written; which said return is in the words and figures following, to wit:

STATE OF COLORADO, } ss:
Arapahoe County, }

FEB'Y 23.

I have duly served the within by reading the same to the within-named A. S. Lockwood, Daniel Witter, W. C. Lothrop, Mitchell Benedict, and J. K. Doolittle and leaving with each a true
93 copy of this writ, as I am therein commanded; the within-named Thomas R. Sloan and Emet Welse not found in my county.

D. J. COOK, *Sheriff,*
By R. SOPRIS, *Deputy.*

Fees:

Service	5 00
Mileage	1 50
Return	25
	6 75

Court summons to answer petition for sale of real estate.

Probate docket No.—. Record —, page —. Arapahoe county court.

James M. Strickler, administrator of the estate of Thomas M. Sloan, deceased, *vs.* Amanda S. Lockwood. Filed Feb'y 23, 1877.

AMOS STECK.

And afterwards, on, to wit, the 7th day of March, A. D. 1877, the following order was had and entered of record in said court, to wit:

JAMES M. STRICKLER, Administrator of the Estate of Thomas M. Sloan, Deceased,
vs.
AMANDA S. LOCKWOOD, THOMAS R. SLOAN, DANIEL WITTER, Wilbur C. Lothrop, Mitchell Benedict, James K. Doolittle, and Emmet Wells.

Petition for sale of real estate

Now, on this day, comes said petitioner, by Messrs. Charles and Dillon, his solicitors, and the defendant Amanda S. Lockwood, by her solicitor, also comes; and thereupon, on motion of the said petitioner's solicitors, the said defendant Amanda S. Lockwood is ruled by the court to plead, answer, or demur to the petition of the said petitioner herein by or before the first day of the next term of this court.

And afterwards, to wit, upon the 28th day of March, A. D. 1877, came Stanley G. Fowler, a publisher, and filed his certificate
94 of publication of notice to defendants; which said certificate is in the words and figures following, to wit:

I, Stanley G. Fowler, do hereby certify that I am printer and publisher of the Denver Mirror, a weekly newspaper printed in the city of Denver, county of Arapahoe and State of Colorado, and that the annexed notice was published in the weekly issue of said paper for the period of thirty days and for five consecutive insertions, and that the first publication of said notice was in the issue dated February 24th, A. D. 1877, and that the last publication of said notice was in the issue dated March 24th, A. D. 1877.

In witness whereof I have hereunto set my hand this 26th day of March, A. D. 1877.

STANLEY G. FOWLER.

Printer's fees, $7.

Legal Notice.

STATE OF COLORADO, } ss:
County of Arapahoe, }

In the County Court of said County, to the March Term, A. D. 1877

JAMES M. STRICKLER, Administrator, etc., }
vs. }
SARAH A. SLOAN and Others. }

Petition to sell real estate to pay debts.

Public notice is hereby given to the said Sarah A. Sloan, William B. Sloan, Callie Sloan, Laurie Sloan, Edward Sloan, Burtie Sloan, William Ottaway Sloan, Analiza Sherrill, Ella Sherrill, Kate Sherrill, Eddie Sherrell, Charlie Sherrill, Louisa Cordelia Mills, Emmet Wells, and Thomas R. Sloan that a petition has been filed in said court in the above-entitled cause by James M. Strickler, administrator with the will annexed of the estate of Thomas M. Sloan, late of said county, deceased, against you and others, praying for an order to sell the real estate of said deceased to pay debts, and that an
95 affidavit has been filed in said court stating that you and each of you (excepting the said Thomas R. Sloan) are non-residents of this State, and that the said Thomas R. Sloan on due inquiry cannot be found in this State, and that a summons has been issued in this cause returnable on the first day of the next term of said court, to be holden at Denver, in said county, on the first Monday of March next.

Now, unless you and each of you shall be and appear at said court on the day last aforesaid and plead to and answer said petition, the same will be taken as confessed by you and each of you, and a decree for sale of said real estate, as prayed, will be entered for payment of said debts.

Witness:

AMOS STECK,
Judge of said Court.

No. voucher 5. James M. Strickler *vs.* Sarah A. Sloan *et al.* Certificate of publication notice to def'ts. Recorded in the Documentary Record No. 5, page- 126 and 127. Filed Mar. 28, 1877.

AMOS STECK, *Judge.*

STANLEY G. FOWLER, *Publisher.*

And afterwards, to wit, upon the 31st day of March, A. D. 1877, came Amanda S. Lockwood, by Bromwell & Sleeth, her attorneys, and filed herein her answer to the petition to sell real estate; which said answer is in the words and figures following, to wit:

Of the April Term, A. D. 1877, of the County Court of Arapahoe County, Sitting in Probate.

In the Matter of the Petition of JAMES M. STRICKLER, Adm., &c., of Thomas M. Sloan, Dec'd, to Sell Lands, &c.

The answer of Amanda S. Lockwood, daughter of Thomas M. Sloan, deceased, and one of the defendants in said cause.

96 This respondent, saving and reserving to herself all benefit of exceptions to the petition of said administrator, filed herein by reason of the many defects, inaccuracys, mistakes, insufficiencys therein and thereof, for answer thereto, or to so much thereof as she is advised it is material or necessary for her to answer, answering, says—

That as to the said reports made by said executor concerning the amount of the personal property of said deceased, Thomas M. Sloan, and as to the amount of debts due and owing from said estate this respondent, of her own knowledge, knows nothing; but she is informed and verily believes that the personal estate, including personal property and debts owing to said estate, might have been, if well administered, made — realize a much greater amount than what is stated in said petition and the reports referred to therein, so that the claims now unpaid might have been in part paid without resorting to the real estate.

And respondent, further answering, says that, as she is informed and believes, divers articles of personal property belonging to said estate were sold at an unnecessary sacrifice and for much less than could have been obtained for the same by proper management thereof; and also that divers debts due said estate became uncollectible by reason of unnecessary delays on the part of said administrator enforcing collections of the same.

And as to all other allegations in said bill contained not hereinbefore referred to this respondent knows nothing of her own knowledge, but she prays the court to hold the said petitioner to strict proof of all and singular the allegations in his petition and protect the rights of respondent.

BROMWELL & SLEETH,
Solicitors for Def't Amanda S. Lockwood.

97 *In re* Thomas M. Sloan, dec'd. Answer of Amanda S. Lockwood.
Filed Mar. 31, 1877.

AMOS STECK, *Judge.*
BROMWELL & SLEETH, *Sol.*

And afterwards, to wit, upon the 3rd day of April, 1877, there issued out of said court a summons under the hand and seal of the judge thereof; which said summons is in the words and figures following, to wit:

STATE OF COLORADO, } ss:
Arapahoe County, }

The people of the State of Colorado to the sheriff of said county, Greeting:

We command you, as we have heretofore commanded you, that you summon Sarah A. Sloan, William B. Sloan, Callie Sloan, Laura Sloan, Edward Sloan, Bertie Sloan, William Ottaway Sloan, Analiza Sherrill, Ella Sherrill, Kate Sherrill, Eddie Sherrill, Charles Sherrill, Louisa Cordelia Mills, Thomas R. Sloan, Emmet Wells, Daniel Witter, James K. Doolittle, Mitchell Benedict, Wilbur C. Lothrop, and Amanda S. Lockwood, if they shall be found in your county, personally to be and appear before the county court of said Arapahoe county, in probate, on the first day of the next term thereof to be holden at the court-house, in Denver, in said Arapahoe county, on the first Monday of May, 1877, to answer unto the petition of James M. Strickler, administrator of the estate of Thomas M. Sloan, deceased, on the return day hereof, which said petition was filed in our said court on the twenty-first day of February, A. D. 1877, and prays that this court will order and direct the sale of real estate of said deceased for the payment of debts.

And have you then and there this writ, with an endorse-
98 ment thereon in what manner you shall have executed the same.

Witness the Hon. Amos Steck, judge of our said court, and the seal thereof, at Denver aforesaid, this 3rd day of April, A. D. 1877.

[SEAL.] AMOS STECK, *Judge.*

Probate court summons. To answer petition for sale of real estate. Probate docket No. —. Record —, page —. Arapahoe county court. James M. Strickler, administrator, etc., of the estate of Thomas M. Sloan, deceased, *vs.* Sarah A. Sloan *et al.*

CHARLES & DILLON, *Attorneys.*

And afterwards, to wit, upon the 4th day of April, A. D. 1877, came James K. Doolittle, Mitchell Benedict, and Wilbur C. Lothrop and filed herein their answer to the petition for the sale of real estate; which said answer is in the words and figures following, to wit:

STATE OF COLORADO, }
Arapahoe County. }

In the County Court, of the April Term, A. D. 1877.

In the Matter of the Petition of JAMES M. STRICKLER, administrator, etc., of estate of Thomas M. Sloan, deceased, for leave to sell real estate to pay debts.

Petition to sell real estate.

The answer of James K. Doolittle, Mitchell Benedict, and Wilbur C. Lothrop, defendants, to the petition of the said James M. Strickler, administrator.

These defendants, now and at all times hereafter saving and reserving unto themselves all benefit and advantage of exceptions to the said petition, for answer thereto severally say that they or any or either of them, to the knowledge or belief of the others or other of them, do not know and have never been informed, save by the said petition, and cannot set forth, as to their belief or otherwise, whether or not the matters and things set forth
99 in said petition are true, except as to the deeds of trust in said petition and hereinafter mentioned, and therefore pray the court to hold said petitioner to strict proof of the same.

And as to the said deed of trust executed by the said Sarah A. Sloan on the said eighteenth day of November, A. D. 1876, to the said defendant, Mitchell Benedict, as trustee, for the use and benefit of the said defendant, James K. Doolittle, of the said block thirty-eight (38), in Lakeville, in the county of Arapahoe and State of Colorado aforesaid, to secure to said Doolittle the sum of fifty-two dollars and thirty-five cents in six months after the date thereof, with interest at eighteen per cent. *per cent.* per annum, the said defendants, Doolittle and Benedict, say that said deed of trust was executed in manner and form and for the purpose aforesaid, and pray that their rights thereunder may be carefully guarded.

And the said defendant, Wilbur C. Lothrop, further answering, says that the said deed of trust executed by the said defendant, Ella Sherrill, on the fifteenth day of April, A. D. 1876, of block nine (9), in said Lakeville, to this defendant, as trustee, for the use and benefit of said James M. Strickler, was made and executed in manner and form and for the amount and purpose stated in said petition, and this defendant prays that his interests and rights thereunder and the rights and interests of the said Strickler may be protected by the court in making final decree herein.

Wherefore these defendants submit their rights and interests in the matter in question in this cause to the tender consideration and protection of this honorable court, and pray strict proof of the matter alleged in said petition.

JAMES K. DOOLITTLE.
MITCHELL BENEDICT.
WILBUR C. LOTHROP.

100 In the matter of the estate of Thomas M. Sloan, deceased. Answer of James K. Doolittle, Mitchell Benedict, and Wilbur C. Lothrop to petition of James M. Strickler, administrator. Filed April 4th, 1877, by consent for April 1st, A. D. 1877.

AMOS STECK,
County Judge.

And afterwards, to wit, upon the 4th day of April, 1877, came the said Jas. M. Strickler, by Charles & Dillon, his solicitors, and filed herein his replication to the answers of Amanda S. Lockwood and James K. Doolittle, Mitchell Benedict, Wilbur C. Lothrop, heretofore filed; which said replications are in the words and figures following, to wit:

STATE OF COLORADO, }
Arapahoe County. }

In the County Court, of the April Term, A. D. 1877.

JAMES M. STRICKLER, Administrator, &c., }
vs. } In Chancery.
THOMAS M. SLOAN, Deceased. }

The replication of James M. Strickler, complainant, to the answer of Amanda S. Lockwood, defendant.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto says that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all which
101 matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

CHARLES & DILLON,
Sol. for Complainant.

James M. Strickler, adm'r, *vs.* Thomas M. Sloan, dec'd. Replication to answer of Amanda S. Lockwood. Filed April 4th, '77.

AMOS STECK,
County Judge.

CHARLES & DILLON,
Sol. for Complainant.

STATE OF COLORADO, }
Arapahoe County. }

In the County Court, of the April Term, A. D. 1877.

JAMES M. STRICKLER, Administrator, etc., }
vs. } I- Chancery.
THOMAS M. SLOAN, Deceased. }

The replication of James M. Strickler, complainant, to the answer of James K. Doolittle, Mitchell Benedict, and Wilbur C. Lothrop, defendant-.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiency of the said answer, for replication thereunto says that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorble court shall direct, and humbly prays as in and by his said bill he has already prayed.

CHARLES & DILLON,
Sol. for Complainant.

102 James M. Strickler, adm'r, etc., *vs.* Thos. M. Sloan, deceased. Replication to answer of James K. Doolittle, Mitchell Benedict, and Wilbur C. Lothrop. Filed April 4th, 1877.

AMOS STECK,
County Judge.

CHARLES & DILLON,
Sol. for Complain't.

And afterwards, to wit, upon the 4th day of June, A. D. 1877, came the sheriff and filed herein the summons heretofore issued, with his return thereon written; which said return is in the words and figures following, to wit:

STATE OF COLORADO, }
Arapahoe County, } *ss:*

I have duly served the within by reading the same to the within-named Amanda S. Lockwood, James K. Doolittle, Mitchell Benedict, Daniel Witter, and Wilbur C. Lothrop, as per original summons heretofore filed herein, the within-named Sarah A. Sloan, William B. Sloan, Callie Sloan, Laurie Sloan, Edward Sloan, Burtie Sloan, William Ottoway Sloan, Analiza Sherrill, Ella Sherrill, Kate Sherrill, Eddie Sherrill, Charlie Sherrill, Louisa Cordelia Mills, Thomas R. Sloan, and Emmet Welis not found in my county, as I am therein commanded.

D. J. COOK, *Sheriff,*
By R. SOPRIS, *Deputy.*

Probate court summons. To answer petition for sale of real estate. Probate docket No. —, Record —, page —. Arapahoe county court. James M. Strickler, administrator, etc., of the estate of Thomas M. Sloan, deceased, *vs.* Sarah A. Sloan. June 4, A. D. 1877.

CHARLES & DILLON, *Attorneys.*

And afterwards, to wit, upon the 6th day of June, A. D. 1877,
103 came Lorin A. Staley, guardian *ad litem* to minor heirs, and filed herein his answer as such guardian *ad litem;* which said answer is in the words and figures following, to wit:

STATE OF COLORADO, } *ss:*
Arapahoe County, }

In the County Court of said County, of the June Term Thereof, A. D. 1877.

To the Honorable Amos Steck, judge of the county court of said Arapahoe county:

The answer of Callie Sloan, Laurie Sloan, Edward Sloan, Burtie Sloan, William Ottaway Sloan, Ella Sherrill, Kate Sherrill, Eddie Sherrill, and Charlie Sherrill, infants under the age of twenty-one years, by Lorin A. Staley, their guardian *ad litem,* to the petition of James Strickler, administrator, the complainant.

These defendants, answering by their guardian *ad litem,* say that they are infants, and they therefore submit their rights and interests in the matter in question in this cause to the tender consideration and protection of this honorable court, and pray strict proof of the matters alleged in said petition.

CALLIE SLOAN, LAURIE SLOAN,
EDWARD SLOAN, BURTIE SLOAN,
WILLIAM OTTOWAY SLOAN, ELLA SHERRILL,
KATE SHERRILL, EDDIE SHERRILL,
CHARLIE SHERRILL,
By their guardian *ad litem,* LORIN A. STALEY.

In re Thomas M. Sloan, deceased. Answer of infants, by their guardian *ad litem.* Filed June 6, 1877.

AMOS STECK, *Judge.*

LORIN A. STALEY,
Guardian ad Litem.

And afterwards, to wit, upon the 13th day of June, A. D.
104 1877, came Stanley G. Fowler, publisher, and filed herein certificate of the publication of notice; which said certificate is in the words and figures following, to wit:

I, S. G. Fowler, do hereby certify that I am printer and publisher of the Denver Mirror, a weekly newspaper printed in the city of Denver, county of Arapahoe and Territory of Colorado, and that the annexed notice was published in the regular issue of said paper

for the period of thirty days and for five consecutive insertions, and that the first publication of said notice was in the issue dated April 7th, A. D. 1877, and that the last publication of said notice was in the issue dated May 6th, A. D. 1877.

In witness whereof I have hereunto set my hand this sixth day of May, A. D. 1877.

STANLEY G. FOWLER.

Printer's fees, $—.

Legal Notice.

STATE OF COLORADO, } ss:
County of Arapahoe, }

In the County Court of said County, to the May Term, A. D. 1877.

JAMES M. STRICKLER, Administrator, etc., }
vs. }
SARAH A. SLOAN and Others. }

Petition to sell real estate to pay debts.

Public notice is hereby given to the said Sarah A. Sloan, William B. Sloan, Callie Sloan, Laurie Sloan, Edward Sloan, Burtie Sloan, William Ottaway Sloan, Analiza Sherrill, Ella Sherrill, Kate Sherrill, Eddie Sherrill, Charlie Sherrill, Louisa Cordelia Mills, Emmet Wells, and Thomas R. Sloan that a petition has been filed in said court in the above-entitled cause by James M. Strickler, administrator with the will annexed of the estate of Thomas M. Sloan, late of said county, deceased, against you and others, praying for an
105 order to sell the real estate of said deceased to pay debts, and that an affidavit has been filed in said court stating that you and each of you (excepting the said Thomas R. Sloan) are non-residents of this State, and that the said Thomas R. Sloan on due inquiry cannot be found in this State, and that an alias summons has been issued in this cause returnable on the first day of the next term of said court, to be holden at Denver, in said county, on the first Monday of May next.

Now, unless you and each of you shall be and appear at said court on the day last aforesaid and plead to and answer said petition, the same will be taken as confessed by you and each of you, and a decree for sale of said real estate, as prayed, will be entered for payment of said debt.

Witness:

AMOS STECK,
Judge of said Court.

In re estate of Thomas M. Sloan, deceased.
Certificate of publication. Filed June 13, 1877.
AMOS STECK, *Judge.*

And afterwards, to wit, upon the 23rd day of June, A. D. 1877, the following proceedings, *inter alia*, were had and entered of record in said court, to wit:

In the Matter of the Estate of THOMAS M. SLOAN, Deceased.

JAMES M. STRICKLER, Administrator, etc.,
vs.
SARAH A. SLOAN *et al.*

Petition for leave to sell real estate to pay debts.

This cause having come on to be heard upon the said petition, the answers thereto, the replication of the complainant to such answers, and the proofs heard and offered upon the trial of this cause, and the cause having been argued by counsel for the respective parties, and the court having duly considered the same;

And it appearing now to the court by the proofs aforesaid that
106 the said complainant is the administrator with the will annexed of the estate of Thomas M. Sloan, deceased, late of said county; that as such administrators he has caused to be filed in this court his inventory, the appraisement bill, and sale bill of the personal estate of said deceased, and has rendered to this court a just and true account of the said personal estate and the debts of the said deceased; and it further appearing to the court that there are just claims and demands against the said estate remaining unpaid which amount to the sum of fifty-seven hundred and five dollars and seventy-five cents, as nearly as may be ascertained, and that there is no personal property or effects of the said estate with which to pay the same, the said administrator having faithfully applied all the said personal estate and effects towards the payment of said claims;

And it further appearing to the court that the largest and most pressing claim allowed against the estate aforesaid is that certain claim of Walter Higgin in said petition mentioned and which was allowed by this court on the second day of February, A. D. 1877, for the sum of four thousand six hundred and thirty dollars; was contracted by the said administrator on the thirty-first day of August, A. D. 1875, by procuring a loan of four thousand dollars from said Higgins to said administrator to pay the debts and claims then allowed against said estate and to preserve the same from being sold under a deed of trust executed by said decedent in his lifetime to one F. A. Driscoll, and by the terms of which said deed of trust said estate was then liable at any time to be sold, and under which said deed of trust the beneficiary was then threatening sale, and that the promissory note secured by said deed of trust was drawing interest at the rate of two per cent. per month, and that the
107 said loan of said Higgins was made payable one year after the date thereof and drew interest at the rate of one and one-half per cent. per month, secured by mortgage of that portion of said real estate as mentioned in said petition; and it further appearing to the court that said loan was a *bona fide* transaction; that the money so received was faithfully applied by said administrator in paying the debts due and owing from the said decedent, and, moreover, that it was due and contracted with the knowledge and approval of the said *advent* defendants, and that it was advantage-s and a necessity to said estate welfare and the interests of all of the said defendants;

And it further appearing to the court that the said Thomas M. Sloan, deceased, died possessed of certain real estate, as set forth in the said petition, and that the said administrator has given due notice of his intention to present his said petition to this term of said court for the sale of said real estate, both by publication to the said non-resident defendants and by service of process upon the said resident defendants, as required by law; that a guardian *ad litem* was appointed by this court to protect the rights of and appear for the said infant defendants, and that said guardian *ad litem* has filed his answer to said petition;

And the court, being sufficiently advised in the premises, doth find that all and singular the allegations in said petition contained are true; and it is therefore—

Ordered, adjudged, and decreed by the court that the said administrator have leave, and is hereby authorized, to sell the following-described real estate, described in said petition, situate in the said county of Arapahoe and State of Colorado, or so much thereof as may be necessary to pay the debts now due and owing from
108 said estate, and in the following manner—that is to say: First, all the portion of said real estate set apart by the said decident for the payment of such debts, namely, blocks ten (10), eleven (11), thirteen (13), fourteen (14), fifteen (15), nineteen (19), twenty (20), platted as "Pleasant park;" twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), thirty (30), thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), platted as "Jefferson park;" thirty-seven (37), forty (40), forty-one (41), forty-two (42), forty-three (43), forty-four (44), forty-five (45), forty-six (46), and forty-seven (47) of the town of Lakeville, as per *seal* thereof on file in the office of the clerk and recorder of said county, in the State; *west* quarter of section thirty-one of township three (3) south of range sixty-eight west; secondly, blocks one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), twelve (12), sixteen (16), seventeen (17), eighteen (18), twenty-one (21), twenty-eight (28), twenty-nine (29), thirty-one (31), thirty-six (36), thirty-eight (38), thirty-nine (39), and forty-eight (48), in the town of Lakeville aforesaid; and also the undivided one-seventh interest of the said decedent in and to the east thirty-seven and seventy-eight one-hundredths acres in the northwest quarter of section thirty-one, in township three south of range sixty-eight west, being a strip of land off the east side of the quarter section last aforesaid thirty-seven and $\frac{78}{100}$ rods wide and one hundred and sixty rods long.

And it is further ordered, etc., that the said administrator offer the said parcels of land for sale at public auction separately, first in lots, then in entire blocks, and, lastly, in a lump, excepting the said undivided one-seventh interest, which shall be offered as one
109 parcel, and that all of said parcels be offered in the order first aforesaid, and upon the eighteenth day of July next, at the hour of ten o'clock in the forenoon of said day, in front of the post office, on Lawrence street, in said city of Denver, the said administrator having first given notice of such intended sale for at least twenty (20) —— in some newspaper published in said county of

Arapahoe, and in case the said administrator should deem it for the best interest of said estate he may postpone the said sale to such other day as he may appoint, always giving notice, however, of such postponement sale as in the first instance.

And it is further ordered, etc., that said real estate shall be sold on the following terms: On all sales under (500) five hundred dollars one-half thereof cash in hand and the balance in twelve months from date of sale, with interest at a rate not less than ten per cent. per annum, and on all sales over five hundred (500) dollars one-third thereof in cash, one-third in twelve months, and one-third in two years thereafter, with interest as aforesaid, the purchaser or purchasers to give security for such unpaid balances by deeds of trust upon the parcels of land so purchased by them, and that the costs of the proceedings be paid out of the proceeds of said sale or sales.

And that the said administrator report his acts and doings herein to this court, and that this application be for that purpose continued to the next term of this court.

And afterwards, to wit, upon the 23d day of July, A. D. 1877, came James M. Strickler, administrator, etc., and filed in said court his report of sale of real estate; which said report is recorded in Documentary Record No. 6, at pages 194 to 197, of the records of said court, and is in the words and figures following, to wit:

110 In the County Court of the County of Arapahoe and State of Colorado, July Term, A. D. 1877.

To the Hon. Amos Steck, judge of said court:

In the Matter of the Application of JAMES M. STRICKLER, administrator with the will annexed of Thomas M. Sloan, deceased, to sell real estate.

The said administrator, charged with the execution of the order of sale entered in said cause at the last June term of said county court, would respectfully submit the following report of his acts and doings under said order:

That in pursuance of said order of sale he did, on the twenty-seventh day of June, A. D. 1877, cause a notice of said order to be published in the Denver Tribune, a daily newspaper published in the city of Denver, in said Arapahoe county, for three successive weeks and for more than twenty consecutive days prior to said sale, a copy of which advertisement, with the publisher's certificate thereof, is hereto attached.

That in pursuance of said order of sale and said notice he did, at the time and place mentioned in said notice, sell at public sale the said real estate in the said order directed to be sold, and in the following manner—that is to say:

First. That portion of said real estate named in said order as set apart for the payment of the debts of said estate and not specifically devised by the said deceased and separately in the smallest sub divisions thereof, and receiving no bid therefor I offered—

Second. The residue of the said estate known as Lakeville separately in the smallest subdivisions thereof, and receiving no bid therefor I offered—

Third. The whole of said Lakeville, being the forty-eight blocks thereof and comprising one hundred sixty acres, and sold the
111 same to Margaret Higgins, of the county of Rio Grande and State of Colorado, for five thousand nine hundred dollars, hers being the highest and best bid therefor, and upon the terms named in said order, namely, one-third cash in hand, one-third in one year, and the residue in two years, with interest at the rate of ten per cent. per annum, secured by deed of trust upon the property sold, or if the purchaser so elect she may, on the confirmation of this sale and approval by this honorable court, pay the entire amount in cash, and thereupon I offered the residue of said estate, namely, the undivided one-seventh interest of said decedent in the east $37\frac{78}{100}$ acres in the northwest quarter of section thirty-one (31), in township three (3) *of south* range sixty-eight (68) west, in said Arapahoe county, and sold the same to the said Margaret Higgin for the sum of one hundred dollars, that being the highest and best bid therefor, and upon the following terms: One-half cash in hand, balance in one year, with interest and security as aforesaid, or the whole payable in cash as aforesaid, no conveyance, however, to be made in either case until after the confirmation and approval by said court of such sales.

All of which is respectfully submitted and an order confirming and apprising all of said acts and doings prayed for.

JAMES M. STRICKLER,
Administrator with Will Annexed of
Thomas M. Sloan, Deceased.

STATE OF COLORADO, } *ss:*
Arapahoe County, }

I, Herman Beckurts, of said county of Arapahoe, do hereby certify that I am publisher and proprietor of the Denver Tribune, a daily newspaper printed and published in Denver, in said county and State; and I further certify that the notice, of which the annexed is a true copy, has been published in said newspaper for
112 three (3) successive weeks, and that the first publication of said notice was in said paper bearing date the twenty-seventh day of June, A. D. 1877, and the last publication of said notice was in said paper bearing date the eighteenth day of July, A. D. 1877.

In witness whereof I have hereunto set my hand this eighteenth day of July, A. D. 1877.

HERMAN BECKURTS.

Fees, $7.00.

Administrator's Sale of Real Estate.

By virtue of an order of the county court of Arapahoe county, in the State of Colorado, made at the June term thereof, A. D. 1877, upon the petition of the undersigned, administrator with the will

annexed of the estate of Thomas M. Sloan, deceased, against Sarah A. Sloan and others, I will on Wednesday, the eighteenth day of July, A. D. 1877, at the hour of ten o'clock in the forenoon of said day, sell at public vendue, in front of the post office on Lawrence street, in the city of Denver and county aforesaid, the following-described real estate situated in said county of Arapahoe and State of Colorado, to wit: All the interest of the said Thomas M. Sloan, deceased, in blocks one (1) to forty-eight (48), inclusive, in Lakeville, as per plat thereof recorded in said county, being all of the south-west quarter of section thirty-one (31), in town. three (3) *of south* range sixty-eight (68) west, and the east $37\frac{78}{100}$ acres of the north-west quarter of said section thirty-one (31). Terms of sale: On all sums under $500 one-half cash in hand, remainder in one year, with interest at 10 per cent. per annum; on all sums over $500 one-third cash in hand, one-third in one year and one-third in two years, with interest as aforesaid; all such unpaid balances to be secured
113 by deed of trust of the premises sold, no conveyance to be made till the sale has been reported and approved by court.

June 27th, 1877.

JAMES M. STRICKLER,
Administrator with the Will Annexed.

CHARLES & DILLON,
Attorneys, 342 Larimer Street, Denver, Colorado.

STATE OF COLORADO, } ss:
Arapahoe County, }

In the County Court, July Term, A. D. 1877.

JAMES M. STRICKLER, Administrator, etc., of Thomas M. Sloan, Deceased,
vs.
SARAH A. SLOAN and Others.

Petition to sell real estate.

James M. Strickler, being duly sworn, on oath says he is the petitioner in the above-entitled action; that on the eighteenth day of July, A. D. 1877, in pursuance of the order and decree of this honorable court, he sold certain real estate of said deceased, as appears at length in the accompanying report, and the affiant says he did not at said sale, directly or indirectly, purchase any part of the real estate then or there sold, and has no interest, direct or indirect, in the purchase thereof by the said Margaret Higgins.

JAMES M. STRICKLER.

Sworn to and subscribed before me this first day of August, A. D. 1877.

AMOS STECK,
Judge of County Court of said Arapahoe County.

In re Thomas M. Sloan, deceased.
Report of sale of real estate. Filed Jul- 23, 1877.
AMOS STECK, *Judge.*

Recorded in the Documentary Record No. 5, page- 194 to 197.
JAMES M. STRICKLER, *Adm'r, etc.*

114 And afterwards, to wit, upon the 30th day of July, A. D. 1877, the following order was had and entered of record in said court, to wit:

In the Matter of the Estate of THOMAS M. SLOAN, Deceased.

And now, on this day, come- James M. Strickler, administrator of the estate of said deceased, and files his report of sale of real estate made by him pursuant to an order heretofore made herein; and it appearing to the court that said administrator in making said sale has in all respects complied with the directions of the statute in such case made and provided and of said order—

Therefore it is considered by the court that the said report be approved, and that the said administrator execute and deliver to the purchaser of said real estate a deed conveying the same to the purchaser thereof.

And afterwards, to wit, upon the 7th day of August, A. D. 1877, came James M. Strickler, administrator, etc., and filed herein his account and vouchers numbered from "2" to "7," inclusive; which said account and vouchers are in the words and figures following, to wit:

STATE OF COLORADO, } ss:
Arapahoe County, }

To the Hon. Amos Steck, judge of the county court of Arapahoe county, July term, A. D. 1877:

The Account of James M. Strickler, Administrator of the Estate of Thomas M. Sloan, Deceased, Late of said County and State.

The said administrator charges himself as follows:

July, 1877. To amount rec'd of Margaret Higgins for real estate sold this day per order of court------ $6,000

115 CONTRA.

By the following payments to creditors of deceased, to wit:

To Walter Higgins ----	Voucher 1--	$4,882	13
County court costs----	" 2--	55	10
Sheriff's costs----	" 2a-	6	75
Charles & Dillon, att'ys ----	" 3--	250	00
S. G. Fowler, advertising ----	" 4--	7	
Ditto " ----	" 5--	7	
Denver Tribune----	" 6--	7	
L. A. Staley, att'y for heirs----	" 7--	25	
Balance due me as per last account, filed Feb'y 2, '77-		760	00
		$6,000	

All of the real and personal estate of the said decedent, Thos. M. Sloan, in this county, being now disposed of, and all the outstanding debts proved against said estate being now fully paid, and there being nothing remaining for this accountant to administer upon, he prays to be hence discharged.

All of which is respectfully submitted.

JAMES M. STRICKLER,
Administrator, etc., of Estate of Thomas M. Sloan, Deceased.

Dated at Denver, Colorado, this seventh day of August, A. D. 1877.

In re Thomas M. Sloan, deceased. Administrator's account. Filed August 7th, 1877.

AMOS STECK,
County Judge.

Recorded in Documentary Record No. 6, page 202.
JAMES M. STRICKLER, *Adm'r, etc.*

116 DENVER, COLORADO, *August 7th*, 1877.

Received from James M. Strickler, administrator of estate of Thomas M. Sloan, deceased, forty-eight hundred eighty-two and $\frac{13}{100}$ dollars, in full payment of my claim against estate of said deceased and interest to date. $4,882.13.

WALTER HIGGIN.

DENVER, COL., *August 7th*, 1877.

Received of James M. Strickler, administrator with the will annexed of the estate of Thomas M. Sloan, deceased, the sum of fifty-five dollars and ten cents ($55.10) in full of all costs accrued in this court against said estate and due the county judge for fees.

AMOS STECK,
County Judge.

Voucher No. 2. County court costs. $55.10.

SHERIFF'S OFFICE, DENVER, COL.

Messrs. Charles & Dillon, complainants' costs, to D. J. Cook, Dr., sheriff of Arapahoe county.

No. —. To sheriff's fees J. M. Strickler *vs.* T. M. Sloan's estate, as follows:

5 summons; service, 5.00; mileage, 1.50; return, .25—6.75. Total, —.

Received payment,

D. J. COOK, *Sheriff*,
By R. SOPRIS, *Deputy.*

Voucher 2*a*. *In re* estate of Thomas M. Sloan, deceased. Rec'pt for sheriff's costs, $6.75.

DENVER, COLO., *August 7th*, 1877.

Received from James M. Strickler, adm. of estate of Thomas M. Sloan, deceased, two hundred and fifty dollars for legal services rendered said estate in matter of your petition to sell real estate to pay debts. $250.00.

CHARLES & DILLON.

117 Voucher No. 3. Charles & Dillon. $250.00.

DENVER, COL., *April* 30, 1877.

Messrs. Charles & Dillon to Denver Mirror Publishing Co., Dr.
Office, Lawrence St. near 16th, Schayer's bl'k.

To adv't legal notice 30 days, from April 7th to May 6th, inclusive ---------- $7 00

Rec'd payment,

STANLEY G. FOWLER.

Estate voucher 4. Rec'pt for fees paid for publication notice. Filed June 13, 1877.

AMOS STECK, *Judge*.

DENVER, COLORADO, *August 7th*, 1877.

J. M. Strickler, administrator, to Denver Tribune, Dr., steam printing establishment. First-class job printing done on short notice. Cor. Sixteenth and Holladay St. Herman Beckurts, proprietor.

June 27. To adv't sale real estate of Thos. M. Sloan, deceased, 2 fol., 3 weeks ---------- $7 00

Paid Denver Tribune.

RAYMOND.

Voucher No. 6. Denver Tribune. $7.00.

DENVER, COLO., *August 6th*, 1877.

Received from J. M. Strickler, administrator of estate of Thomas M. Sloan, deceased, twenty-five dollars for services rendered as guardian *ad litem in re* of petition to sell real estate to pay debts. $25.00. LORIN A. STALEY.

Voucher No. 7. L. A. Staley, guardian *ad litem*. Rec'pt for $25.00.

I, R. W. Steele, clerk of the county court of Arapahoe county, in the State aforesaid, do hereby certify the above and foregoing
118 to be a true, perfect, and complete copy of all the papers now on file or recorded in the clerk's office of the county court of Arapahoe county aforesaid in the matter of the estate of Thomas M. Sloan, deceased, and comprises all the proceedings had and entered of record in the matter of the estate aforesaid in said county court.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Denver, this 7th day of May, A. D. 1883.

[SEAL.] R. W. STEELE, *Clerk*,
By K. P. MACE, *Deputy*.

119 UNITED STATES OF AMERICA, }
State of Colorado. }

In the Supreme Court in and for said State.

SARAH A. SLOAN *et al.*, Plaintiffs in Error, }
vs.
JAMES M. STRICKLER, Adm'r, etc., Defendant in Error. }

Assignment of Errors.

There is error in the proceeding of the probate court (now county) of Arapahoe county in the matter of the proceedings had in said court for the sale of the real estate of said Thomas M. Sloan, deceased, as shown by the foregoing record, which the said Edward Sherrill, Laura Sloan (now Laura Bailey) and Edward Sloan, Bertie Sloan, William Ottaway Sloan, Kate Sherrill, and Charles Sherrill, infants, by Amanda S. Lockwood, the next friend of their own selection, defendants below, now assign in this court as cause for declaring null and void the decree for the sale of real estate of the said Thomas M. Sloan, deceased.

The said court erred in granting the decree awarding the sale of the real estate of the said Thomas M. Sloan, deceased, in this:

First. That there was no citation issued to these heirs, the above-named parties, requiring them and each of them to attend the said court at the hearing upon the application for the probate of a certain instrument of writing filed in said court purporting to be the last will and testament of Thomas M. Sloan, deceased, and show cause, if any they had, why said instrument of writing should not be admitted to probate and record as the true last will and testament of the said Thomas M. Sloan, deceased.

Second. That there was not appointed by said court a guardian *ad litem* to the above-named minor heirs at the time fixed by the court for the hearing on the application for the probate of the paper-writing filed in said court purporting to be the last will and testament of the said Thomas M. Sloan, deceased.

120 Third. That said court did not cause to be published for four successive weeks in some weekly newspaper printed in said Territory of Colorado a notice addressed to said heirs of Thomas M. Sloan, deceased, as required by law, setting forth the presentation of the said will for probate, the name and place of residence of the person presenting the same, the name and place of residence of the said Thomas M. Sloan, the testator in said will, and the property devised as described therein, and requiring said heirs-at-law to attend the probate of such will at a day and place named in such notice, not less than thirty nor more than sixty days from the final publication thereof.

Fourth. That no citation has ever been issued to these heirs, and because they nor any of them had ever been served with citation notifying them of the presentation of said will for probate, and because no guardian *ad litem* for them or any of them was ever appointed by the said probate (now county) court to appear for these

heirs-at-law, then minors, and in their behalf at the hearing on the application for the probate of the paper-writing filed in said court purporting to be the last will and testament of said Thomas M. Sloan, deceased, because no citation to appear at the hearing on the application for the probate of the paper-writing filed in said court purporting to be the last will and testament of said Thomas M. Sloan, deceased, was ever issued to any person as guardian for these minor heirs or any of them, because no notice of the presentation of said will, as required by law, was ever published as required by law, and because no guardian nor guardian *ad litem* ever appeared at the probating of said will in behalf of these heirs, then minors.

121 Fifth. The appointment of James M. Strickler administrator with the will annexed of the estate of Thomas M. Sloan, deceased, was without warrant of law, there having been no relinquishment of right to administer upon said estate filed or made by these heirs, next of kin of said Thomas M. Sloan, deceased, or by any of them.

Sixth. The appointment of the said James M. Strickler was not in conformity with the statute of the Territory (now State) of Colorado in such case made and provided.

Seventh. There is no affidavit or other evidence to show that these heirs of said Thomas M. Sloan, deceased, resided or had gone out of the then Territory of Colorado, or that their residence, upon diligent inquiry, could not be found.

Eighth. There was no evidence produced in said court showing that these heirs, next of kin of said Thomas M. Sloan, deceased, having preference of administering upon the said estate of Thomas M. Sloan, deceased, had relinquished their prior rights thereto.

Ninth. The statutory period had not elapsed within which these heirs, next of kin of Thomas M. Sloan, deceased, might have applied to said court for letters of administration upon said estate to issue to them or some one of them.

Tenth. The said James M. Strickler, administrator with the will annexed of the estate of said Thomas M. Sloan, deceased, was not warranted in borrowing money of and mortgaging the real estate of said deceased to one Walter Higgin on the 31st day of

122 August, A. D. 1875, there being at that time sufficient amount in the hands of the said administrator to pay all claims established against the said estate within one year from the granting of letters of administration to the said James M. Strickler, and because the claim or debts to pay which the said loan is alleged to have been made was barred by the statute of limitations.

Eleventh. The said administrator had no authority to borrow said money of Walter Higgin and mortgage the said estate on the 31st day of August, 1875, there being no order of court authorizing said loan to be made or said property to be mortgaged.

Twelfth. The said claim of Walter Higgin, for the payment of which the sale of real estate of said Thomas M. Sloan, deceased, was ordered to be and was sold, was barred by the statute of limitations.

Thirteenth. There were no debts against the estate of Thomas M.

Sloan, deceased, for the payment of which the said real estate could be sold.

Fourteenth. The report of James M. Strickler, administrator with the will annexed of said Thomas M. Sloan, deceased, filed December 3rd, 1875, showed that all the debts allowed against the estate of said Thomas M. Sloan, deceased, within one year from the granting of letters of administration with the will annexed to said James M. Strickler had been paid in full and showed a balance in the hands of the said administrator amounting to the sum of $160.15 in favor of said estate.

Fifteenth. It appeared that all the debts allowed against the said estate and all the legacies charged thereon had been
123 paid, and because it appeared that the only debts for the payment of which the said administrator petitioned to sell the real estate of said Thomas M. Sloan, deceased, were contracted and incurred by the said administrator after the death of the said Thomas M. Sloan.

Sixteenth. There was no legal or sufficient notice of the application to sell the said real estate of said Thomas M. Sloan, deceased, ever published.

Seventeenth. No original summons was ever issued against these heirs, devisees under the will of said Thomas M. Sloan, deceased, and defendants in the court below.

Eighteenth. The original summons was returned before the return day thereof and was never issued against these heirs, devisees under the will and defendants below, and no notice which might be published could be predicated upon such summons which would be legal and sufficient to these heirs or any of them.

Nineteenth. No summons was ever served upon these heirs, devisees under the will of Thomas M. Sloan, deceased, defendants in the court below, or any of them, or upon the guardians, as required by law.

Twentieth. The petition for the sale of said real estate was not presented at the March term, A. D. 1877, nor at the May term, A. D. 1877, of said court, as in and by the several notices published by the said administrator it was advertised he would do.

Twenty-first. The alias summons issued in the matter
124 against these heirs-at-law, devisees under the will and defendants in the court below, commanding the said defendants, these heirs and devisees, to appear before said court on the first Monday of the May term, A. D. 1877, of said court, when by law there was no May term of the said court.

Twenty-second. The notice which was caused to be published by the judge of said court notified these heirs, defendants below, to be and appear at the May term, A. D. 1877, of said court, when by law there was no such term of court provided.

Twenty-third. The first publication of said notice was not sixty days before the day named therein for these heirs, defendants below, to appear, and because the said cause was not continued until the next succeeding term of said court.

Twenty-fourth. It appears from the foregoing record in the matter

that the sale of said real estate was made at the July term of said court, to wit, on July 18th, 1877, and the said administrator made a report of his proceedings in the sale of said real estate at the same term of court at which he made the sale of said real estate, to wit, on July 23rd, 1877, and not at the next term of said court succeeding such sale, as was required by law, and the said report was approved at said July term, 1877, to wit, on July 23, 1877.

Twenty-fifth. It appears that these heirs, devisees under the said will and defendants below, were minors and had no guardian resident of this State, and the said court failed to appoint a guardian *ad litem* for them to appear in their behalf and resist the said petition for the sale of real estate.

Twenty-sixth. Because the claim of Walter Higgin, the largest and most pressing claim against said estate, to pay which the decree ordering the sale of said real estate was made, was never allowed by said court as a debt against said estate.

125 Wherefore these plaintiffs in error pray this court to declare said decree ordering the sale of the real estate of the said Thomas M. Sloan, deceased, null and void, and to restore them to their rights in the premises.

EDWARD SHERRILL,
LAURIE BAILEY AND
EDWARD SLOAN,
BERTIE SLOAN,
WILLIAM OTTAWAY SLOAN,
KATE SHERRILL, AND
CHARLES SHERRILL, *Infants,*
By AMANDA S. LOCKWOOD,
Their Next Friend, &c., Pl'ffs in Error,
By ROBERT W. STEELE AND
WILLIAM H. MALONE,
Their Attorneys.

126 [Endorsed:] 1216. Beck, C. J. In the supreme court of the State of Colorado, to December term, A. D. 1883. Sarah A. Sloan *et al's.*, plaintiffs in error, *vs.* Jas. M. Strickler, adm., &c., defendant in error. Transcript of record and assignment of errors. Robert W. Steele, William H. Malone, attorneys for plaintiffs in error. Filed in supreme court Jul- 31, 1883. James A. Miller, clerk.

127 And afterwards and on the same day, to wit, July 31, A. D. 1883, a writ of error was issued and filed in said cause; which said writ of error and the endorsement thereon *is* in words and figures as follows, to wit:

STATE OF COLORADO, } *ss:*
Supreme Court, }

The people of the State of Colorado to the clerk of the county court of the county of Arapahoe and State of Colorado, Greeting:

Because in the record and proceedings and also in the decree in a

suit which was lately in the county court of Arapahoe county, sitting in matters of probate before the judge thereof, between Sarah A. Sloan, William B. Sloan, Callie Sloan, Laura Sloan (now Laura Bailey), Edward Sloan, Bertie Sloan, William Ottaway Sloan, Analiza Sherrill, Ella Sherrill, Kate Sherill, Eddie Sherrill, Charles Sherrill, Louisa Cordelia Mills, Thomas R. Sloan, Emmet Wells, Daniel Witter, James K. Doolittle, Mitchell Benedict, Wilbur C. Lothrop, and Amanda S. Lockwood, defendants, and James M. Strickler, administrator with the will annexed of the estate of Thomas M. Sloan, deceased, plaintiff, manifest error hath intervened, as it is said, to the great injury of the said Laura Bailey (formerly Laura Sloan), Edward Sherrill and Edward Sloan, Bertie Sloan, William Ottaway Sloan, Kate Sherrill, and Charles Sherrill, infants, as we are informed, *and* we, being willing that the said error, if any there be, should in due manner be corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if final judgment has been rendered, that you send to
128 the justices of our supreme court, at Denver, in said State, with all convenient dispatch, a true copy of all the pleadings therein, together with a complete and perfect transcript of the record and proceedings of the suit aforesaid, with all things concerning the same, distinctly and openly, under the seal of your court, together with this writ, so that the said justices may have them at the place of holding the said supreme court, in Denver, on the first Tuesday of December, A. D. 1883, that, the record and proceedings aforesaid being inspected, they may cause to be done thereupon for correcting that error what of right, according to law and the rules of said court, ought to be done.

Witness the Hon. William E. Beck, chief justice of our
[SEAL.] said supreme court, at Denver, and the seal thereof this 31st day of July, A. D. 1883.

JAMES A. MILLER,
Clerk Supreme Court.

Endorsed as follows: 1216. Supreme court. Writ of error. Sloan *et al. vs.* Strickler, adm'r, etc. Filed in the supreme court July 31, A. D. 1883. James A. Miller, clerk.

And thereafter and on, to wit, December 6th, A. D. 1883, came said defendant in error, by his attorneys, Messrs. Harmon & Cover, and filed herein *their* joinder in error; which said joinder in error and the endorsements thereon *is* as follows, to wit:

129 STATE OF COLORADO, *ss:*

In the Supreme Court, to the December Term, A. D. 1883.

SARAH A. SLOAN *et al.*, Plaintiffs in Error,
vs.
JAMES M. STRICKLER, Adm'r of Thos. M. Sloan, Deceased, Defendant in Error.

Record from the County Court of Arapahoe County.

Now comes the said J. M. Strickler, by Harmon & Cover, his attorney-, and says that there is no error in the record and proceedings nor in the rendition of judgment by the said county court as assigned herein, and therefore he prays that the said judgment may be affirmed, and that his costs may be adjudged to him, etc.

HARMON & COVER,
Attorney- for J. M. Strickler.

Endorsed as follows: No. 1216. In supreme court, Colorado. Sarah A. Sloan *et al.*, pl'ffs in error, *vs.* James M. Strickler, adm'r, d'f't in error. Joinder in error. Filed in supreme court Dec. 6, 1883. James A. Miller, clerk.

And on, to wit, June 15, A. D. 1887, the following order was entered by said supreme court, assigning said cause, among
130 others, to the supreme court commission for consideration and report, which order is as follows, to wit:

In the Matter of Causes Assigned to the Supreme Court Commission.

At this day it is ordered by the court that the following causes be assigned for consideration to the said supreme court commission, they being the first thirty cases upon the submission docket which have not been withdrawn by the justices of the court or heretofore assigned to and yet undetermined by said commission, and omitting those in which some member of said commission has acted as attorney, viz:

* * * * * * *

No. 1216, Sloan *et al. vs.* Strickler, adm'r, etc.

* * * * * * *

And afterwards and on, to wit, February 10th, A. D. 1888, the same being one of the juridical days of the December, A. D. 1887, term of said supreme court—present, Hon. Joseph C. Helm, chief justice; Hon. V. A. Elliott, Hon. Chas. D. Hayt, justices; F. A. Richardson, bailiff, and James A. Miller, clerk—the following further proceedings were had and entered of record in said cause as follows, to wit:

131 SARAH A. SLOAN, WILLIAM B. Sloan, Callie Sloan, Laura Sloan (now Laura Bailey), Edward Sloan, Bertie Sloan, William Ottaway Sloan, Analiza Sherrill, Ella Sherrill, Kate Sherrill, Eddie Sherrill, Charles Sherrill, Louisa Cordelia Mills, Thomas R. Sloan, Emmet Wells, Daniel Witter, James K. Doolittle, Mitchell Benedict, Wilbur C. Lothrop, and Amanda S. Lockwood, Plaintiff- in Error,

vs.

JAMES M. STRICKLER, Administrator with the Will Annexed of the Estate of Thomas M. Sloan, Deceased, Defendant in Error.

1216. Error to the County Court of Arapahoe County, Sitting in Probate.

At this day, this cause coming on to be heard as well upon the transcript of proceedings and decree had in said county court sitting in probate in and for the county of Arapahoe, as also upon the matters assigned for error herein, and the same having been heretofore argued by counsel and submitted to the consideration and judgment of the court, and it appearing to the court that there is manifest error in the proceedings and decree aforesaid of said county court sitting in probate, it is therefore considered, adjudged, and decreed by the court that the decree aforesaid of said county court sitting in probate be, and the same is hereby, reversed, annulled, and altogether held for naught, and that the cause be remanded to said county court sitting in probate for further proceedings according to law. It is further considered and adjudged by the court that said plaintiffs in error do have and recover of and from defendants in error their costs in this behalf expended, to be taxed and paid by said administrator in the due course of administration of said estate, and let the opinion of the court filed herein be recorded.

132 And on the same day, to wit, February 10, A. D. 1888, said supreme court filed its opinion herein in the office of the clerk of the court.

And on February 23, A. D. 1888, came again said defendant in error and filed herein his petition for a rehearing in this cause; which said petition and the endorsements thereon *is* as follows, to wit:

In the Supreme Court of Colorado.

SARAH A. SLOAN *et al.*, Plaintiffs in Error,
vs.
JAMES M. STRICKLER, Administrator, etc., Defendant in Error.

Petition of Defendant in Error for a Rehearing.

"To the honorable judges of the supreme court of the State of Colorado:

Your petitioner, James M. Strickler, administrator with the will annexed of Thomas M. Sloan, deceased, and defendant in error in the above-entitled cause, prays that he may be allowed a rehearing of said cause upon the following grounds, viz:

First. That the court erred in holding that there was no May term of the probate court of Arapahoe county to which the summons in this case could be returnable.

Second. That the court erred in holding that the terms of
133 said court as then provided by the act of February 13th, 1874, were the terms referred to in sections 99, 102, and 103 of chapter 90, Revised Statutes of 1868. The court should have held, as was true in fact and in law, that said sections referred to the terms provided by section 6 of the act of November 7th, 1861, Revised Statutes, page 523, to wit, the first Monday in every month.

Third. That the court erred in holding that the act entitled "Wills, executors, and administrators," chap. 90, page 639, Revised Statutes, gave this jurisdiction to the probate courts, not as courts of probate, but sitting for the exercise of the equity jurisdiction conferred by the legislature. The court should have held that such jurisdiction was conferred by said act upon said courts as courts of probate sitting for the exercise of their probate jurisdiction.

Fourth. The court erred in holding that the summons and notice were insufficient to confer jurisdiction over the non-resident defendants and that the hearing was had and the decree directing the sale was made before the time provided by law and before the time allowed by law for the non-resident defendants to appear and oppose the same. The court should have held that these proceedings were regular in all respects and conferred jurisdiction over all the non-resident defendants.

Fifth. That the court erred in reversing said decree and order of sale.

Sixth. That said decree and order of sale should have been affirmed.

134 Seventh. Counsel for plaintiffs in error were permitted to file a brief in reply to brief and argument for defendant in error after the time allowed by law, and counsel for defendant in error had no notice of the same until after the case was decided. Said brief and argument is a material departure in some particulars from the position formerly taken by counsel for plaintiff in error, and counsel for defendant in error should have had an opportunity to be heard.

And your petitioner will ever pray, etc.

WM. B. HARRISON AND
E. P. HARMAN,
Attorneys for Petitioner."

Endorsed as follows: 1216. In the supreme court of Colorado. Sarah A. Sloan *et al.*, plaintiffs in error, *vs.* James M. Strickler, adm'r, etc., defendant in error. Petition of defendant in error for a rehearing. Filed in supreme court Feb. 23, 1888. James A. Miller, clerk.

And afterwards and on, to wit, October 31, A. D. 1888, the following further proceedings were had and entered of record in said cause by said supreme court, to wit:

SARAH A. SLOAN *et al.*, Plaintiffs in Error, *vs.* JAMES M. STRICKLER, Administrator, etc., Defendant in Error.	1216. Error to Probate Court of Arapahoe County.

135 At this day, upon consideration of the petition of defendant in error for a rehearing herein, it is ordered by the court that said petition be allowed, and that a rehearing be, and is hereby, allowed herein, and that oral argument be heard in the cause at such time as the parties shall agree upon to suit the convenience of the court.

And afterwards and on, to wit, January 18th, A. D. 1889, the same being one of the juridical days of the December, A. D. 1888, term of said supreme court—present, Hon. Joseph C. Helm, chief justice; Hon. V. A. Elliott and Hon. Chas. D. Hayt, justices; F. A. Richardson, Esq., bailiff, and James A. Miller, clerk—the following further proceedings were had and entered of record in said cause, to wit:

SARAH A. SLOAN, WILLIAM B. SLOAN, CALLIE Sloan, Laura Sloan (now Laura Bailey), Edward Sloan, Bertie Sloan, William Ottaway Sloan, Analiza Sherrill, Ella Sherrill, Kate Sherrill, Eddie Sherrill, Charles Sherrill, Louisa Cordelia Mills, Thomas R. Sloan, Emmet Wells, Daniel Witter, James K. Doolittle, Mitchell Benedict, Wilbur C. Lothrop, and Amanda C. Lockwood, Plaintiffs in Error, *vs.* JAMES M. STRICKLER, Administrator with Will Annexed of the Estate of Thomas M. Sloan, Deceased, Defendant in Error.	1216. Error to Probate Court of Arapahoe County.

136 At this day, this cause coming on to be heard upon the rehearing heretofore granted, as well upon the transcript of proceedings and judgment had in said probate court in and for the county of Arapahoe, as also upon the matters assigned for error

herein, and the same having been heretofore argued by counsel and submitted to the consideration and judgment of the court, and it appearing to the court that there is no error in the proceedings and judgment aforesaid of said probate court, it is therefore ordered by the court that the judgment heretofore and on, to wit, February 10th, 1888, entered herein be and stand vacated and for naught held, and that the opinion of the court filed on, to wit, February 11th, 1888, be, and the same is hereby, stricken from the files; and upon the said rehearing it is considered and adjudged by the court that the judgment aforesaid of said probate court be, and the same is hereby, affirmed and stand in full force and effect, and that this cause be remanded to said probate court for such other and further proceedings according to law as shall be necessary to the final execution of the judgment of said probate court in the cause notwithstanding the said writ of error.

It is further considered and adjudged by the court that said defendant in error do have and recover of and from said plaintiffs in error his costs in this behalf expended, to be taxed, and that he have execution therefor; and let the opinion of the court filed herein at this day be recorded.

137 And on, to wit, the same day last aforesaid, the said supreme court filed in the office of the clerk of said court its opinion; which said opinion and the endorsements thereon *is* as follows, to wit:

138 SARAH A. SLOAN *et al.*, Plaintiff- in Error,
v.
JAMES M. STRICKLER, Adm'r, &c., Defendant in Error, } No. 2161.

Error to Arapahoe county court on rehearing.

In February, 1874, Thomas M. Sloan died in Arapahoe county, Colorado, leaving a wife, certain children, and grandchildren him surviving. At the time of his death he was seized of certain lands in said county, and by his last will and testament he devised certain parcels thereof to his wife, children, and grandchildren, respectively, leaving other parcels undevised. His will having been proved, the executors therein named resigned their trust; and his wife, all his children, and one Driscoll, the principal creditor of the estate, declining to administer, James M. Strickler was, by the probate court of said county, appointed and duly qualified as administrator with the will annexed. Strickler proceeded with the administration for about three years, when it was found to be necessary to sell some of the real estate to discharge the just debts allowed against the estate, which at that time amounted to about $5,000 more than the value of the personal estate; and thereupon, on February 21st, 1877, the administrator presented his petition to said probate court for authority to sell the undevised lands and also the devised lands, if necessary, for the purpose aforesaid. The widow, children, and

grandchildren, devisees, and others supposed to be interested
139 therein were made defendants; the grandchildren were minors. Summons was issued and served on the resident defendants, who appeared and answered. An alias summons was issued on April 3d, returnable on the first Monday of May, and an affidavit of non-residence being filed the first publication of the non-resident defendants was made April 7th; the last on May 6th. The alias summons was returned on June 4th, 1877, showing service on all but the non-resident defendants. On June 6th one Lorin A. Staley appeared and answered as guardian *ad litem* for the grandchildren, but his appointment as such does not appear of record.

On June 23d, 1877, a hearing was had before the court, and the whole lands in the county—first the undevised and the remainder afterwards, if required—were decreed by the court to be sold for the purpose aforesaid. The whole was sold for $6,000; and, report thereof being made, the sale was confirmed on July 30, 1877, and the final account of the administrator was approved.

The said grandchildren, devisees, bring this record here upon writ of error and ask a reversal of the decree directing the sale of the said real estate. As the opinion of the court does not notice the errors assigned antecedent to the filing of the petition for the sale of the real estate, the foregoing statement, it is believed, will be found sufficient for a correct understanding of the case.

Messrs. Steele & Malone, for plaintiffs in error.

Messrs. Harman & Cover, W. B. Harrison, E. T. Wells, and Markham & Dillon, for defendants in error.

Per Curiam:

Upon this rehearing the principal questions presented for our consideration are: (1.) Do writs of error lie from the supreme court to the county court in cases of this kind? (2.) Was there a May term of the county court of Arapahoe county for 1877,
140 provided by law, to which a summons issued under section 98, chapter 90, Revised Statutes 1868, commonly called the "statute of wills," might be made returnable? (3.) If the foregoing questions be answered affirmatively, were the proceedings sought to be reviewed in this case regular, and was the judgment or decision of the court therein valid, or was the same prematurely rendered?

Since the adoption of the constitution (art. 6, sec. 23) and the passage of the county court act (Gen. Laws, ch. 23, sec. 8), which went into effect June 20, 1877, there is no longer room for reasonable doubt that writs of error lie from the supreme court to every final judgment or decree of the county courts, including cases of this kind. It may still be difficult to determine what matters are to be considered in the record when cases like this are sought to be reviewed upon writ of error. The opinion in the case of Vance's Heirs *v.* Rockwell, 3 Colo., 240, pronounced at the April term, 1877, is direct authority to the effect that cases of this kind may be reviewed upon error on the ground that the judgment or decision is final. It was the precise point before the court, but neither that

opinion nor the subsequent ones (3 Colo., 293, and 4 Colo., 47) expressly decide what proceedings, if any, in the course of administration antecedent to filing of the petition may be reviewed upon a writ of error sued out for the purpose of testing the validity of the decree of sale, and, inasmuch as we find no error in such antecedent proceedings, we see no occasion at this time to express any opinion on that question.

In the case of Vance's heirs, *supra*, the opinion was expressed that the law still remained in force providing terms of the probate court commencing on the first Monday of each month, notwithstanding six terms were provided by the act of 1865 for the
141 first Monday of alternate months, but it was considered in the opinion that the regular monthly terms of the court were for the exercise of its probate jurisdiction and not for its enlarged common-law and chancery jurisdiction, and proceedings under the statute of wills to sell real estate, etc., were classed as belonging to such enlarged jurisdiction. The act of March 11, 1864, was cited as indicating that different terms of court were intended for different kinds of business, whereas by section 8 of that act the terms of the probate court were expressly declared to be the same for the supposed new jurisdiction as for the former probate business, and no act has been cited providing separate terms of the probate court for probate business prior to the act of March 22, 1877, which did not go into effect till the 20th of June following; but we must not be understood as holding that the monthly sitting of the county judges on the last Monday of each month, as required by the last-mentioned act, are to be regarded as terms of court to which process issued under section 98 of the statute of wills must be made returnable. The learned judge who delivered the opinion in Vance's heirs, *supra*, seemed to think it necessary to make this distinction regarding separate terms for different jurisdictions in order to escape the conclusion announced in Hadley *v.* Fish, 3 Colo., 51, to the effect that writs or error do not lie to review judgments of a court in a summary proceeding not in accordance with the course of the common law; but it seems to us that it was only necessary then, as now, to hold that a decree for the sale of real estate to pay debts under the statute of wills was a final judgment or decision in order to render such matter reviewable upon error. The amendment to the organic act of 1863, section 3, also the act of 1864, page
142 119, section 14, made the writ of error expressly applicable to such judgments and decisions of the probate courts. No matter what may have been the scope of the writ of error at common law it was as competent for the territorial legislature to make the writ applicable to judgments in proceedings of a summary or statutory ch-racter as to judgments at law or decrees in equity.

By the act of 1862, page 97, the territorial legislature conferred jurisdiction of the kind of proceedings now under consideration, though by a different procedure, exclusively upon the probate courts, without any mention as to change of terms of the court; and at that time the probate court had no chancery jurisdiction nor any jurisdiction above that of a justice of the peace except its probate

jurisdiction. The enlarged jurisdiction was not conferred until after the amendment to the organic act in 1863. Thus it is seen that the legislative intent was clearly against the supposed distinction and supports the theory that proceedings of this kind are not to be classed as a part of the enlarged common-law and chancery jurisdiction of the probate courts. While we thus depart from the reasoning of the learned judge in the case of Vance's heirs, we nevertheless uphold the opinion so far as the essential points therein decided are concerned. We accept it as decisive to the effect that decisions of the county courts in proceedings under the statute of wills for the sale of real estate to pay debts of decedents are final judgments; that they may be reviewed by this court upon writ of error, and also that prior to June, 1877, terms of the probate court for the first Monday of every month were provided by statute. By an examination of the various acts it will be found that the probate courts at these terms were not restricted to the exercise of
143 their probate jurisdiction, but that they were required to continue open for all business pending before them. Act 1861, p. 383; also Rev. St. 1868, ch. 71, sec. 6. In our opinion, the act of 1874, page 217, providing bi-monthly terms for the probate courts of Arapahoe county, does not have the effect to abolish the monthly terms nor to change their character or purpose. As we have seen, it has been held that the act of 1865, page 97, did not have such effect. We do not hold that proceedings of the kind now under consideration to sell real estate to pay debts, etc., are part of the common-law or equity jurisdiction of the county courts, but that such proceedings are instituted and carried on solely in aid of the settlement of estates of deceased persons and are closely allied to probate proceedings.

Previous to the revision of 1868 such proceedings were commenced by publication of notice merely. Statutes of Wills, 1861, p. 427, sec. 94 *et seq.* After the revision they were commenced by summons, and certain persons were required to be made defendants; but the object of the proceeding was always the same. It was to divest the title to real estate in which such defendants were supposed to be interested as heirs, devisees, or otherwise, and so the final judgment or decision to be rendered was most important. Under the constitution, as well as under the organic act, the proceeding may be said to be purely statutory; but this in no way militates against the theory that it is within the jurisdiction of the county court at any term when such court is lawfully convened. The constitution, article 6, section 23, expressly limits the civil jurisdiction of the county courts to be conferred by law to cases where the debt, damage, or claim or value of property in-
144 volved shall not exceed $2,000; but as to the settlement of estates of deceased persons, as well as all matters of probate, etc., the jurisdiction is unlimited. From this the conclusion is almost irresistible that a proceeding of the kind now under consideration is not to be classed under the common-law or equity jurisdiction of the county courts, but that it must be considered as a special statutory proceeding directly connected with the probate

jurisdiction. Any other conclusion renders the statute inoperative in the county court when the property, as in this case, exceeds the value of $2,000. North Prob. Pr., ch. 38; Water Power Co. *v.* Webster, 26 Ill., 233; Bennett *v.* Whitman, 22 Ill., 449.

One further question remains to be considered, Were the proceedings regular and was the judgment valid or was the same prematurely given? The preliminary steps, such as the filing of a proper petition, the issuance of summons, alias summons, with proper effort to serve the same and the return thereof, the filing of an affidavit as to the non-residence of certain defendants, and the due publication of notice to the non-resident defendants, seem to have been taken in substantial compliance with the statute; also the continuance, the appointment of a guardian *ad litem* for the minors, and the hearing, decree, sale, and confirmation thereof appear to have been regular. Vance's Heirs *v.* Maroney, 4 Colo., 47; Rowand *v.* Carrol, 81 Ill., 224; Tibbs *v.* Allen, 27 Ill., 124.

One objection only requires particular notice. Section 103, chapter 90, Revised Statutes aforesaid, provides in substance that if, in cases where notice by publication is permitted, the first publication be not at least sixty days before the day named in the sum-
145 mons the cause shall stand continued until the next succeeding term of the court. The summons in this case was issued early in April and was made returnable the first Monday of May, and as sixty days had not elapsed the cause stood continued until the next succeeding term, in June; and thereafter and on June 23d the court ordered and decreed the sale of the real estate. It is argued with some force that still another continuance to the July term should have been granted, as there were not sixty days intervening between the issuance of the summons and the first day of the June term; but the statute does not so provide; and while in all proceedings dependent upon constructive notice, and especially where the rights of minor heirs are involved, the statutes should receive strict construction and be strictly pursued in all matters of substance, still we do not feel called upon to add to the statute something which it does not contain, either in words or by necessary implication, in order to overthrow this judgment. Public policy and common justice require that judgments of courts of record of long standing and upon the faith of which property rights have been acquired should not be disturbed except for the most manifest error.

The former opinion is withdrawn and the judgment of the county court is accordingly affirmed.

Affirmed.

146 And on, to wit, January 31, A. D. 1889, came said plaintiffs in error and filed in said cause their petition for rehearing; which said petition, with the endorsements thereon, is as follows, to wit:

147 In the Supreme Court of the State of Colorado.

SARAH A. SLOAN and Others, Plaintiffs in Error,
vs.
JAMES M. STRICKLER, Adm'r, etc., Defendant in Error. } 1216.

Petition for a Rehearing.

L. S. Dixon, for plaintiffs in error.
Filed Jan'y 31st, '89.

JAMES A. MILLER, *Clerk.*

148 In the Supreme Court of the State of Colorado.

SARAH A. SLOAN and Others, Plaintiffs in Error,
vs.
JAMES M. STRICKLER, Adm'r, etc., Defendant in Error.

Petition for a Rehearing.

The only opinion of the court in this cause is that filed with the clerk on the 21st day of January instant, in pursuance of which judgment was rendered against the plaintiffs in error. The former and now overruled opinion of the court pronouncing an opposite judgment has been suppressed and no longer exists. This was done upon the petition of the defendant in error for a rehearing, which was granted and the cause reheard with the result shown by the opinion now on file. It is within fifteen days from the filing of this opinion, according to rule 25 of this court, that the petition of the plaintiffs in error, the now for the first time defeated parties to the action, must file and present their petition; and this is a right plainly secured to them by the rule. It is the first time or opportunity which they have had to complain of errors which may have been committed against them, or, in the language of the rule, to state "the points wherein it is alleged that the court has erred" so far as their rights are concerned. The rule was obviously intended to give every party suffering for the first time from what he
149 conceives to be error to present his points and authorities and have them considered by the court and the error corrected, if so it be found. Any other construction of the rule would work manifest injustice and inequality between the parties in the particulars provided for by the rule. If the petition by the party first defeated would operate to bar the right of petition by the party last defeated in cases circumstanced like the present, the rule would indeed be a most one-sided affair, depriving one of the parties of its privileges by reason of the other party, his antagonist, having had occasion to and having successfully availed himself of such privileges. We submit that no such construction of the rule is to be tolerated, and that, so far as the rights of the plaintiffs are now involved, the case is to be regarded precisely as if the opinion last filed was the first and only one in the cause, so that no remittitur under the rules could be made until the expiration of fifteen days. As to the plaintiffs in error and the rights and privileges conferred

upon them by the rule, which was made as much for their benefit as for that of the other party, it is the first and only opinion which has ever been filed. The rule is to be construed like the statute granting new trials in ejectment, of which each party, after one judgment against him, may have the advantage. This is mutuality and equality, while any other construction would not be. It is not, therefore, as a matter of grace or favor that we come here with this petition, but as a matter of right secured by the rule.

Overburdened as the court is with the labors imposed upon it, it is possible that applications of this nature, frequently made as they are, may be looked upon with some slight disfavor. It is but natural that this should be so, especially where the questions thus presented have received the careful consideration of the court, as shown by the judgment or opinion which has been pronounced. In this case, however, we do not petition to be reheard upon questions of that kind, but upon such as, after careful examination, we are convinced must have escaped the attention of the court and could not have received that consideration which their nature and importance demand. Upon the propositions expressly discussed and disposed of by the opinion, all save some general remarks found towards its close, we have no criticisms to offer and freely say that we quite concur in the correctness of the conclusions at which the court has arrived. In the struggle which has taken place with respect to the terms of the county court, which
150 appears to have been made the prominent question in this cause, with decisions both *pro* and *con.* in this court it seems to us, after careful study and examination, that other questions of equal, indeed, or we may say of greater moment have not received that consideration which they deserve. It is to such questions that we beg to invite the attention of the court now and ask for them a patient and careful scrutiny and consideration. In the concluding paragraphs of the opinion the defects in the proceedings in the county court, as shown by the record, are spoken of as irregularities, and it is remarked generally that the preliminary steps, some general references to them being made, appear to have been taken in substantial compliance with the statute and that the sale was valid. The defects complained of are not specifically or separately stated or discussed, nor their character pointed out and the objections to them answered. A separate and particular examination of them, which, in view of the well-settled and unquestionable rules of law applicable, we cannot believe they have received at the hands of the court, will, we are satisfied, convince the court not only that they were irregularities or errors for which the proceedings for the sale of the land must at all events be reversed, but that they were something far more serious—namely, jurisdictional defects for which such proceedings must be declared absolutely void. Promising that we shall not trouble the court with a multitude of authorities taken from the great current, and all tending in the same direction, but only with such as we believe go directly to the points which we make, we ask from the court a care-

ful reading and examination of them. We shall not review or attempt to state the cases, but let the court take them at first hand from the books in accordance with the spirit of the rule which requires only a brief of the authorities relied upon in support of our petition.

The orders and decrees of the probate courts for the sale of lands belonging to the estates of deceased persons are made in the execution of mere statutory powers, and, as in case of the execution of all such powers, a substantial compliance with all the requirements of the statutes under which they are granted must be shown or the proceedings will be void. Many of the cases use much stronger language than this, and it has been frequently held that the provisions of the statutes must be strictly and literally complied with or the proceeding becomes a nullity. Such decrees and orders, therefore, differ very widely from those of courts of general
151 jurisdiction in the usual course of actions and proceedings therein, and what would be mere error in the latter ofttimes becomes incurable jurisdictional defect in the former. Mr. Freeman, in his most valuable work entitled Void Judicial Sales, sec. 10, states the law as follows:

"We now pass to the most numerous class of probate sales—those which must be sanctioned by a pre-existing order of court. This order must, in turn, be supported by certain pre-existing facts. In fact, the order of sale bears more resemblance to a judgment obtained in a new action than to an order made in a pre-existing proceeding in which jurisdiction has already been acquired. To obtain an order of sale a petition or complaint must be filed, a citation or notice must be issued and served, and a complete adversary proceeding conducted. Any jurisdictional defects in the proceeding are as fatal as if connected with the original grant of administration; and, what is worse, defects which in actions at law would be treated as mere errors are, in probate proceedings, counted as incurable jurisdictional infirmities."

Again, sec. 11, speaking of the imperative necessity of every material fact required by the statute being stated in the petition, he says:

"The judgment of a court of law can rarely, if ever, be treated as void because pronounced upon an insufficient complaint. An order in probate must be supported by a petition sufficient in substance to show a legal cause for the order. * * * The theory of the law is that the probate courts have no general authority to dispose of the estate in process of administration; that their power of disposition is special and limited, and that he who relies upon the power must disclose a state of facts sufficient to call it into being. It is also essential that the petition state a sufficient cause of action. The order of the court is based upon the petition and cannot draw its support from beyond the petition unless the statute otherwise provide. If the petition states no cause of sale it would not be competent to prove, in support of the sale, that the court in fact received evidence of facts not relied upon by the petition, and that its action

was, in fact, induced by proof of the causes of sale omitted from the petition but specified in the statute."

With this summary, by Mr. Freeman, of the general principles of the law which, as seen by his numerous citations in the same and several subsequent sections, universally govern in the
152 matter of such sales, we will now proceed to state the points and cite the authorities upon which we rely to show that the sale in question was not merely irregular or erroneous, but null and void for want of jurisdiction in the court ordering it.

I.

The record shows (fol. 279) that the first summons tested and bearing date February 21, 1877, being the same day the petition for order of sale was filed, was not issued against any of the absent and non-resident devisees and defendants, except Thomas R. Sloan and Emmet Wells, but aside from those two ran only to the five resident defendants therein named. With the exception of the two above named the only summons issued to the non-resident defendants was the alias summons (p. 97) dated and tested April 3, 1877. The issuance of such alias summons was therefore the first step regularly taken to acquire jurisdiction as against such non-resident defendants. There had been before that time (April 3) no act done by virtue of which jurisdiction as to them could have been lawfully acquired. There was, prior to that date, a publication of notice to the non-resident defendants, as shown by the certificate of the printer (p. 93, '4, '5), but that notice was, with the exception aforesaid, without the issuing of summons to them, which the statute in express words requires. (G. S., section 3583.) As a step to acquire jurisdiction of them or towards acquiring such jurisdiction the publication so made was utterly nugatory and void. Every publication must be preceded by the issuance of the proper process, called in the statute a writ or summons, since the notice, if given before the return day of the writ, must state the time at which the writ is returnable, and, if after the return day of the writ, the time to which the petition is continued. As neither of these things could be done in advance of the issuance of the writ or summons, it is obvious that the making and publication of the notice must follow and cannot precede the issuance of the process, and so the county court seems to have regarded it. The first publication having been made when no summons had been issued for the non-resident defendants, and so, by mistake, falsely reciting a fact which had no existence, the court, in obvious amendment and continuation of such initiatory proceeding, and to cure or remedy the defects therein, proceeded to issue the alias and corrected summons, and
153 thereafter to give and cause to be published the second notice (pp. 104–5) to the non-resident defendants, in which the time at which such alias summons was returnable was correctly stated as required by the statute. Now, the character of these amendatory proceedings, and that they were amendatory merely of the defective ones previously commenced to acquire jurisdiction as to the non-resident defendants, are, we submit, matters too plain on the face of

record to admit of serious doubt or dispute. The fact that an alias summons was issued which expressly or directly connected it with the first one, and which, in its very nature, was but a continuation of the proceedings inaugurated or attempted to be inaugurated by the first one, plainly establishes the amendatory or supplementary character of such subsequent step, taken for the purpose of acquiring jurisdiction of the non-resident defendants, and shows that it was not any new or other or different proceeding which was then being instituted or carried on by or before the court for that purpose. Such being the clear and obvious inference and fact derivable from the record and apparent on its face, we most respectfully submit that it will hardly do for any court, in a matter of such magnitude and importance as the preservation of dead men's estates for the benefit of the helpless ones they often leave behind them, to close its eyes to such fact or inference and to say that it will, notwithstanding, presume that there was some other step taken or action had which changed the character of such subsequent proceedings and rendered them new or initiatory instead of continuing and amendatory, when the result of such presumption will be to remove or destroy a safeguard created by law for the protection and preservation of such estates. We say, on the face of this record, that it cannot be presumed that issuance of the second summons and the publication of the second notice were steps taken in the institution of new proceedings to obtain jurisdiction of the non-resident defendants. We submit that it is manifest upon the record that they were not steps so taken, but that from the making of the affidavit for publication on the 17th of February, which was filed, together with petition, on the 21st, to the day of the making of the order of confirmation it was one and the same proceeding or course of proceedings for the sale of the real estate of the testator. From first to last it was but a single series of steps taken—one suit, so to speak—with jurisdiction obtained as to the five resident defendants by service of the original summons upon them, and attempted to be obtained as to the non-
154 resident defendants by the issuance of the alias summons, followed by the publication of the second notice. This appears by the sheriff's return (fol. 282) of the first summons, made on the 23d of February, and likewise by his return of the second summons (fol. 309), in which he certifies service upon the resident defendants "as per original summons heretofore filed." It is thus apparent that the second summons was never served upon those defendants, but that they were brought in by the service of the original one, which was the only service ever made upon them. If any further evidence were required to show the identity and sameness of the proceedings from beginning to end, these facts disclosed by the record would seem to supply it. There is no room, therefore, for presuming that any other steps were taken or measures resorted to according to law for obtaining jurisdiction as to the absent or non-resident defendants than those appearing on the face of the record, unless recourse is to be had to presumptions of some kind and they are to be indulged contrary to the facts so appearing and the inferences justly and fairly to be drawn from them. It is clear,

we submit, within the rules laid down by all the cases where important matters of this kind are involved, that no such presumptions are to be indulged for the purpose of cutting off the rights of infant and absent heirs and legatees, a helpless class which it is the object of the law most zealously to protect. There is no room in this case for presuming that the second summons was issued in commencement of new proceedings for the sale of the land, none for presuming that any second or other affidavit of non-residence was made than that sworn to on the 17th and filed on the 21st of February, and none for assuming that any such paper or document has slipped or been lost from the record and does not now appear therein. Every such presumption is rebutted by the record, which, as a whole, is harmonious, consistent and complete, and repels the proposition that anything has been mislaid or lost from it. The only affidavit, therefore, of non-residence and for publication of notice is that made on the 17th and filed on the 21st of February, and the question arises whether that affidavit was sufficient to authorize the publication of notice under the second summons or after the issuing of that summons, which, it will be remembered, was the first step lawfully taken towards acquiring jurisdiction as against the non-resident and absent defendants except Emmet
155 Wells and Thomas R. Sloan. We submit that no person can candidly and impartially read and understand the record and arrive at any other conclusion or draw any other inference than that the affidavit of February 17th was the only affidavit for publication ever made and filed in the cause.

The foregoing observations have been made with the view of showing the clear distinction between this case and the case of Turner *v.* Jenkins, 79 Ill., 228, and some other cases in the same court which we find cited in one of the briefs originally submitted by counsel opposed, and for the purpose of showing the direct applicability here of the case of Campbell *v.* McCahan, 41 Ill., 45. Counsel opposed rely upon the recitals in the decree of sale as conclusive evidence of due service by publication. It is very questionable whether this doctrine extends or ought to be extended to matters of special and limited probate jurisdiction, and, if so at all, how far it ought to go. It is certain there is no authority to be found where it has been extended to a record the facts appearing upon the face of which were like those here presented. It may have been extended to cases where there was an absolutely missing paper, but not to one where the proper paper was found in the record, but so filed or made use of as to render it wholly unavailing for the purpose intended. Where such is the case the doctrine of presumption falls as to proceedings of courts of limited and special jurisdiction. The supposed proper paper being found in the record precludes the presumption that any other was prepared or made use of. The record in such case affirmatively shows what the proceedings before the court were, upon what papers and documents it acted, and presumptively all of them, and when this is so the presumption invoked gives way and goes for nothing in favor of the recitals in the judgment or decree even of a court of general jurisdiction. This

has been expressly so ruled by this court in Israel *v.* Arthur, 7 Colo., 5.

The action in the 79 Ill. was in a court of general jurisdiction, and, furthermore, not one against absent or non-resident defendants. There was, therefore, no question of constructive service and none of indulgence in presumptions of any kind where such service is relied upon. It is needless to remind this court of the great difference between cases of that kind and those where questions of constructive notice or service are presented, or to say, with respect to the latter, that the very most strict and literal compliance with the statute is required in order to obtain jurisdiction; nor is it necessary to add that any departure from the statute or
156 omission or defect in the proceeding becomes jurisdictional and is not to be helped out by presumption.

The statute of the State under which the case in 41 Ill. arose and was decided is almost word for word like our own. R. S. (Illinois), chapter 22, sections 12 and 13. For all practical purposes it may be said to be the very same as our own. And so in the proceedings in the probate courts of that State for the sale of lands like statutory provisions are enacted. Chap. 3, sec. 103.

In the case last referred to an affidavit, made twenty days before the filing of the bill and commencement of the suit by the issuing of the summons and publication of the notice, was held to be fatally defective for such purpose; that the court acquired no jurisdiction as to the non-resident defendants, and that its decree and the whole proceedings were *coram non judice* and void. There, as here, the statute was silent as to the time when the affidavit should be made. There, as here, it was to be implied from the provisions of the statute that it was to be made at or very near to the time of the commencement of the proceedings or suit against the non-resident defendants. They were to be substantially contemporanous acts. In that case it will be noticed that no presumption was indulged that a second or other affidavit than that found in the record had been made or presented. Commending the opinion for the sound reasoning and wholesome doctrines which it contains, we leave it with the court for its consideration.

In this case, as we have seen, omitting Thomas R. Sloan and Emmet Wells, there was no commencement of suit against the other non-resident defendants, nine in number, all of whom appear (p. 103) to have been infants answering by a guardian *ad litum* until the issuing of the alias summons, on the 3d day of April, followed by the publication of the second notice, which appeared in the newspaper issued on the 7th of April. There was, therefore, between the 17th of February, the day when the affidavit for publication was made, and the 3d of April, the day the summons against such infant non-residents was issued and a new notice to them given out for publication, a lapse of forty-five days. If the lapse of twenty days was sufficient in the Illinois case to cause the whole proceedings to fall still-born, what shall be said of the passage of such a period as here intervened between the making of the affidavit and the commencement of the suit against those defendants?

It will be interesting to the people of Colorado, certainly those
157 of them who expect to live and die here, leaving some estate, great or small, to their infant children or descendants, to know whether, in the settlement of their estates, this court is prepared to affirm the regularity and validity of proceedings like these; to know whether an affidavit made forty-five days before the time appointed by law is to be held a sufficient foundation for valid constructive service, by force of which their estates so left are to be swept away and their infant heirs or legatees deprived of all benefit of them. This court has not so decided, unless it be, as we believe, by inadvertence, which, when shown, the court will, we trust, not be slow to modify or correct. If the lapse of forty-five days be not a sufficient length of time to avoid the proceeding, then what length of time or will any length of time do so? Will sixty or ninety days or six months or two years or more do so? Where is the limitation when we once depart from the point of time contemplated by the statute? There is no solution of these difficulties, no answer to these questions, except such as we find in the opinion of the supreme court of Illinois.

II.

The petition for order to sell was fatally defective for want of compliance with one of the substantial and most important requirements of the statute. The statute, now found as section 3578, requires a petition "describing particularly the whole of the real estate of which the decedent died seized" and "the nature and value of the several parcels of such real estate respectively." The lands here, as shown by the petition (pp. 85–'6), consisted of many distinct parcels, blocks one to forty-eight, inclusive, of Lakeville, according to the recorded plat thereof on file in the office of the county clerk and recorder, besides other parcels described according to governmental subdivision. There was not only no statement in the petition in the value of the several parcels respectively, but none of their value in the aggregate or in any other way. Upon this subject the language (p. 86) of the petition is as follows:

"The said lots and blocks being laid out as an addition or suburban village to the city of Denver, in said Arapahoe county, but your petitioner is advised and believes a good farm was spoiled by so doing and the residue of said lands being best adapted to farming, but as to the value of said parcel of land your petitioner
158 is unable to fix a value thereon by reason of the stagnation now existing in the market for such real estate."

It thus appears that no value of the real estate for which order of sale was asked was stated or described in the petition, and that, as the administrator had been "advised" that a good farm had been "spoiled" by the testator having laid out one tract of his land into suburban lots and blocks, he was hence unable to state the value of the other tracts mentioned in his petition which had not been so laid out.

If there be anything in the statute which is material to be stated in the petition; if there be one thing above another which is so

material, it is this very matter of value. Of all the things of which the court is required to be informed by the petition, in order that it may exercise a reasonable and sound discretion in the directing of sale, so that the property need not be sacrificed or sold at a time of great depression or low values, this one of the value of the land and of each several parcel is of the greatest moment. It is one of the requirements which, upon the principles running through and sustained by all the authorities, cannot be dispensed with. If it can be omitted, then any other requirement of the statute may also be omitted, and thus all the safeguards thrown around such sales by the act will be frittered away and lost. The county court had no power to suspend the statute in this particular upon the excuse given or pretended to be, and neither has this court. The statute admits of no excuse for departure from or violation of its provisions. If the case had been really one where no value could be put upon the lands to be sold, then it would have been one not within the provisions of the statute, and therefore one where no sale of the lands could be ordered. By the common law there exists no power in any courts to direct the sale of the lands of deceased persons for the payment of their debts not secured by mortgage or otherwise constituting a lien at the time of their decease. All such powers are vested in the courts by statute, and when there is no statute covering a particular case or within which it may be brought, then there is no power to direct a sale. But the excuse offered was a most flimsy and evasive one and savors very strongly of a want of care and fairness on the part of the administrator in the management and conducting of the affairs of the estate. It is evident that the lands were not incapable of valuation, depressed as the market doubtless was at that particular time, for, when
159 the sale came to take place, a purchaser was found able to estimate the value and willing to pay the amount of such estimate. But let the excuse have been what it might, well-founded or otherwise, it made no difference with the power of the court under the statute to order the sale. Without the statement of values no such power existed. The omission became an incurable jurisdictional defect, and the whole proceeding was void.

Especially to the point here discussed the court is referred to the two following cases, in which many other authorities are also cited:

Wilson *v.* Hastings, 66 Cal., 243.
Townsend *v.* Gordon, 19 *id.*, 180.

In the first case cited it will be seen, where the value of the lands was stated in the aggregate and not of the respective portions or lots as required by the statute, that the sale was held void for that reason as well as for want of a sufficient description of some of the tracts.

III.

The debt of the testator of $2,500 and interest due to Walter Higgins, the payment of which was secured by trust executed by

him of that part of his land, about fifty-seven acres, not devised by his will to the various devisees therein named, was not presented by him for allowance against the estate within one year from the granting of letters of administration with will annexed, and was therefore forever barred by express provision of statute. Section 3606. Letters of administration were granted March 9th, 1874, and therefore no such debt existed as a claim against the estate on the 31st day of August, 1875, when the administrator, without license or authority from the county court, gave his note and made his mortgage of the same land to secure the payment of money borrowed by him to pay that debt, together with some others which had been duly exhibited and allowed against the estate. At the time of this transaction the Higgins debt, due from the testator at the time of his death, had ceased to be a claim against the estate. As a debt so contracted, due or owing, it had not been presented or allowed against the estate, and there is no pretense that it was ever presented or allowed, except as it was so done as part of the $4,000 and interest due upon the note for that sum given by the administrator on the 31st of August, 1875, Mr. Higgins being the party who made the loan for
160 that sum, which was secured by the mortgage of the administrator executed at that time. As a creditor by such note and mortgage he presented his claim (pp. 75-'7) on the 15th of January, 1877, and it was allowed on the 2d day of February following. The question arises, therefore, as to the effect of such allowance or the authority to make it under the circumstances disclosed. It is clear that at the time the administrator gave his note and mortgage, which operated as payment of the original debt due to Higgins, that such debt was not one due from the estate or chargeable against any assets then in the hands of the administrator or any which might thereafter come into his hands, whether from the sale of personalty or any real estate belonging to the testator. Higgins, by his failure to exhibit and have his claim allowed against the estate at large, had restricted himself to such rights and remedies for the collection of his debt as the law gave him by virtue of the trust deed which had been executed by the testator in security for its payment. He was no longer a creditor of the estate, but only a person having a lien upon a portion of it for the payment of his demand. Such was his attitude at the time of the execution of the note and mortgage, the borrowing of money, as it is styled in the record, by the administrator. His claim as a creditor of the estate at that time was barred. He had no right to look to it or any part of it as a fund for its payment, except that portion upon which he held a specific lien. Could he by advancing more money and taking the note and mortgage of the administrator spread his original claim over the entire estate of the testator, make it a lien, as it were, upon those portions of the real estate which were previously unincumbered by it and which had been devised by the testator to his children and grandchildren, as shown by the will? The questions are whether it was competent for the administrator to do these things and whether it was within the power of the county court in 1877 to authorize or

direct a sale of the real estate of decedent, not specially charged or incumbered for the payment of a claim, any part of which had been barred by the statute and so had ceased to be a debt or demand due from the estate. The authorities are numerous and uniform that an administrator cannot revive a debt which has been barred, and that any order or license by the probate for the sale of the real estate of the deceased for the payment of such a debt is without juris-
161 diction and void. It is only for debts due from the estate and which have been properly made charges against it as provided by statute that the court is empowered to direct a sale of lands. If there be no such debt the order is void. It is a jurisdictional defect which cannot be cured; and if the decree for sale be void as to part of the supposed debts found by it and for the payment of which the sale is directed, it is void *in toto*, as was held with respect to the sale in the first California case above cited. As to the $2,500 and accumulated interest, being the indebtedness originally contracted by the testator to Higgins or to one Driscol (we are not quite certain from the record which), which entered into and constituted the basis of far the larger part of the promissory note given by the administrator, the decree was for the sale of the lands to pay a claim which had no existence as a debt against the estate. The estate had been absolutely discharged from its payment, and neither administrator nor court possessed any power to resuscitate it. By that unlawful and void proceeding the lands willed to the several absent infant devisees and others were attempted to be charged with the payment — such barred and no longer existing indebtedness, and the principle void in part, void in whole, applies. The authorities in support of this objection to the decree and showing that it was void for want of jurisdiction are abundant. We earnestly request the court to examine them.

Tarbell *v.* Parker, 106 Mass., 347.
Heath *v.* Wells, 5 Pick, 139.
Aiken *v.* Morse, 104 Mass., 277.
Dubois *v.* McLean, 4 McClean, 486.

In addition to the foregoing numerous authorities to the same effect are referred to pages 14 to 16 of the original brief filed for the plaintiffs in error.

IV.

The statute, section 3595, provides that the administrator shall present his report of proceedings upon the sale at the next term of the court succeeding such sale. The sale was made on the 18th day of July, 1877, the report presented on the 23d, and order of confirmation made on the 30th. It was a sale and report made during
162 the same term of court and not a sale reported to the next succeeding term. This was an incurable jurisdictional defect, and the sale was and is void.

Strouse *v.* Drennan, 41 Mo., 289.

Something is said in the opinion about this being a case of a sale

long standing which ought not to be disturbed on that account. It may be the misfortune, but it is certainly not the fault, of the non-resident devisees who prosecute this writ of error that they chanced to be infants and persons under disability at the time the proceedings complained of were taken and that some of them, as we are informed, are still laboring under such disability. This is a direct proceeding to reverse the decree and annul the sale, taken within the time presribed by law for that purpose. There may have been some delay, but if so it was not a matter for which the parties seeking redress at the hands of the court can be held responsible. Very much of the time which has elapsed has arisen from causes over which they had no control. It is not a case, therefore, where laches or neglect is to be attributed to them. They belong to one of the three classes of persons said to be the favorites of the law, and their rights, if they have any, are entitled to the most favorable consideration of the court.

For the reasons above stated a rehearing is most respectfully asked for in this case.

L. S. DIXON,
For Plaintiffs in Error.

Feb'y 1, 1889.

163 And afterwards and on, to wit, the 15th day of February, A. D. 1889, the same being one of the juridical days of said supreme court, the following order was made and entered of record in said cause, to wit:

SARAH A. SLOAN *et al.*, Plaintiffs in Error, *vs.* JAMES M. STRICKLER, Adm'r, etc., Defendant in Error.	1216. Error to the Probate Court of Arapahoe County.

At this day, this cause coming on to be heard upon the petition of plaintiffs in error for a reconsideration of the judgment entered upon the rehearing herein, and upon consideration thereof and being now fully advised in the premises, it is ordered by the court that said petition be, and the same is hereby, denied.

And on January 8th, A. D. 1891, came said plaintiffs in error and filed their precipe for record for the Supreme Court of the United States, which precipe and endorsements *is* as follows:

State of Colorado Supreme Court.

SARAH A. SLOAN *et al.*, Plaintiffs in Error, *vs.* J. M. STRICKLER, Adm'r, etc., Defendant in Error.	1216. Error to County Court of Arapahoe, Sitting in Probate.

164 To the clerk of the supreme court.

SIR: You will please correct and certify the printed

abstract of the record filed in said cause so *as* that it shall show all proceedings in said county court in said cause as certified to said supreme court by the transcript filed therein, as also make a transcript, and append thereto, of all proceedings in said cause in said supreme court, including the petition of plaintiff- in error for a rehearing therein, the denial thereof, and the opinion of the court in said cause, for filing on error in the Supreme Court of the United States.

L. S. DIXON,
STEELE & MALONE,
W. T. HUGHES,
Attorneys for Pl'ffs in Error.

Denver, January 8, A. D. 1891.

Endorsed as follows: 1216. Sloan *et al.*, pl'ffs in error, *vs.* Strickler, adm'r, etc., d'f't in error. Precipe for record for Supreme Court United States.

165 STATE OF COLORADO:

In the Supreme Court.

SARAH A. SLOAN *et al.*, Plaintiffs in Error, *vs.* JAMES M. STRICKLER, Administrator of the Estate of Thomas M. Sloan, Deceased, Defendant in Error.	1216. Error to the County Court of Arapahoe County, Sitting in Probate.

I, James A. Miller, clerk of the supreme court of the State of Colorado, do hereby certify the foregoing to be true and complete copies of the transcript of record of proceedings in the county court of Arapahoe county, sitting in probate matters, in the above cause, as also the proceedings in said cause in said supreme court, as fully as the same is indicated by the precipe filed herein, together with original writ of error and citation & service endorsed and copy of petition and allowance of writ of error.

Witness my hand and the seal of said supreme court affixed at my office, in the city of Denver, this 15th day of January, A. D. 1891.

[Seal Supreme Court, State of Colorado.]

JAMES A. MILLER, *Clerk.*

166 In the Supreme Court, State of Colorado, to the September Term, A. D. 1890.

SARAH A. SLOAN, WILLIAM B. SLOAN, CALLIE SLOAN, LAURA Sloan (now Laura Bailey), Edward Sloan, Bertie Sloan, William Ottaway Sloan, Analiza Sherrill, Ella Sherrill, Kate Sherrill, Eddie Sherrill, Charles Sherrill, Louisa Cordelia Mills, Thomas R. Sloan, Emmet Wells, Daniel Witter, James K. Doolittle, Michal?, Wilbur C. Lothrop, and Amanda S. Lockwood, Plaintiffs in Error,

vs.

JAMES R. STRICKLER, Administrator with the Will Annexed *to* the Estate of Thomas M. Sloan, Deceased, Defendant in Error.

167 To the Honorable Joseph C. Helm, chief justice of the supreme court of the State of Colorado:

Your petitioners, Sarah A. Sloan and the other above-named plaintiffs in error in the case of them against James M. Strickler, administrator with the will annexed of the estate of Thomas M. Sloan, deceased, the same being numbered 1216 upon the docket of the supreme court of the State of Colorado, the said court being the highest court of judicature in the State in which said cause can be heard and determined, now comes and humbly petitions and respectfully show unto your honor that said cause was decided on January 18, 1889, and that a motion for a rehearing was denied on February 15, 1889, and judgment was entered on said last day in said court.

Your petitioners further represent unto your honor that they are advised by their attorneys and counsel, and therefore they verily believe, that cause involves questions arising under the Constitution, statutes, and laws of the United States, and that among those involved your petitioners particularly specify section 1 of the XIV amendment of the Constitution of the United States, which provides, among other things, "Nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny
168 to any person within its jurisdiction the equal protection of the laws."

That your petitioners desire to submit to the Supreme Court of the United States, among others, the following questions, which have been submitted and passed upon by the supreme court of the State of Colorado in the above-entitled cause, and—

1. If under the organic and statutory laws of Colorado, if there was a *coram judice* of the probate (or county) court convening under public law and to which original process was returnable on May 7, 1877.

2. If the probate courts of the Territory of Colorado could take cognizance of any cause which upon its face showed that more than two thousand dollars was involved.

3. If under the territorial legislative acts of 1874 (p. 218, sec. 8, acts of 1874), if there was a May term of the territorial probate court. Act of February 13th, 1874.

4. If the summons of February 21, 1877, was not void for non-

conformity to the statute and for omitting necessary and essential parties to the litigation. (Williams *vs.* Bankhead, 19 Wall., 571; Galpin *vs.* Page, 18 Wall., 371.)

5. If the alias summons was in fact such (the first one being void) and if its publication in a weekly newspaper, beginning on April 7, 1877, the first date of its issue, and ending on May 6, 1877, the last date of its issue, was not void for insufficiency, of four successive weeks' publication, under rules computation of time, between
169 the first insertion of said summons for publication, on April 7, and the first day of the return term of said original process, to wit, on May 7, 1877, the first day of the alleged May term of the probate (county) court.

6. If an order of court appointing a guardian *ad litem* in a strictly statutory proceeding, and not according to the course of the common law, must not be made and shown and proved of and by a record.

7. If elements presenting public policy as a matter to be weighed and given effect to in a cause must not arise out of "regular," material, traversable, and issuable allegations of record in that cause and made of record by the ministerial hand of the court at the instance and request of the parties to the record, or else arise out of material evidence corresponding to the "regular allegations" and confined to the point in issue, and to which a party has had at least one full, fair, real, *bona fide* opportunity to be heard in a court of original jurisdiction, where such matters can only be heard according to the law of the land.

8. If a petition for order of sale of the premises sets forth facts sufficient to confer jurisdiction upon the court to order the sale of real estate, fols. 250–275.

9. If the Higgins claim for $4,630.00, fol. 252, was not barred by the statutes of limitations, letters having been issued March 9, 1874 (fol. 81), and the administrator without authority assumed
170 this note Aug. 31, 1875 (fol. 227), and presented it for allowance more than one year after letters issued, to wit, on Jan. 15, 1877 (fol. 232), this claim was barred (statute, sec. 3606), and, this fact appearing of record, the order of the sale to pay such a claim against an estate is not void.

Wherefore, by the reason of the above and for other good and sufficient reasons, your petitioners most respectfully pray for the allowance of a writ of error from the Supreme Court of the United States, and that your petitioners be permitted to remove the record of this cause into the Supreme Court of the United States for review.

L. S. DIXON,
STEELE & MALONE, &
W. T. HUGHES,
Att'ys for Pl'ff in Error.

The writ of error is allowed, and permission to remove the cause is given in accordance — the foregoing prayer.

At chambers, Denver, Colo., Jan. 12th, 1891.

JOSEPH C. HELM,
Chief Justice Supreme Co. of Colorado.

171 [Endorsed:] No. —. In the Supreme Court of United States. Sarah A. Sloan *et al. vs.* James M. Strickler. Petition. Filed in Supreme Court Jan. 12, 1891. James A. Miller, clerk.

172 In the Supreme Court of the United States.

SARAH A. SLOAN *et al.*, Plaintiffs in Error,
vs.
JAMES M. STRICKLER, Defendant in Error.

And now come the plaintiffs in error in the above-entitled cause and aver there is manifest error in the record therein and in the following points, to wit:

1. The court erred in holding that under organic and statutory laws of Colorado in 1877 there was a May term of the then probate court. (See act of February 13, 1874, p. 218, section 8, acts of 1874.)

The court erred in construing the organic act of the late Territory of Colorado by holding it created the late probate courts and empowered them to take cognizance of any cause which upon the face of the record showed that such cause involved an amount exceeding two thousand dollars.

3. The court erred in holding the summons of Feb. 21, 1877, valid, when it shows a departure from the statute which prescribes
173 its requisites and it omit-ing necessary, essential, and indispensable parties to the litigation. (Williams *vs.* Bankhead, 19 Wall., 571; Galpin *vs.* Page, 18 Wall., 371.)

4. The court erred in holding the summons of February 21, 1877, a valid one, and the second summons an alias one (the first one being void).

5. The court erred in holding the publication of the summons, commencing in a weekly newspaper on April 7, 1877 (Saturday), the first date of its issue, and ending on May 6, 1877 (Sunday), the last date of its issue, a valid four successive weeks' publication prior to the first day of the alleged May term, 1877, of said probate court a valid and sufficient publication, and also in holding that such summons was published at all (fol. 315).

6. The court erred in finding that an order of said probate court was made and existed appointing a guardian *ad litem* in this strictly statutory proceeding and not according to the course of the common law.

7. The court erred in stating its reasons for ordering judgment against plaintiffs in error were reasons of "public policy," because such reasons do not arise out of "regular, material, traversable, or issuable allegations" of record in the cause, tendered by the parties and made of record by the ministerial hand of the court, nor
174 do such reasons of public policy arise out of any evidence introduced in said cause corresponding to "regular allegations" and confined to the point in issue, and to which "regular allegations" and relevant testimony these plaintiffs in error had one full,

fair, *bona fide* opportunity to be heard in a court of original jurisdiction in Colorado and according to the laws of the land.

8. The court erred in holding the petition for the order of sale of the premises sets forth the facts sufficient to confer jurisdiction upon the probate court to order the sale of real estate (fols. 250–275, Original Record).

9. The court erred in not holding the assumption by the administrator of the outlawed note of decedent Sloan was *ultra vires* and a fraud on the part of the administrator and others upon these plaintiffs in error, the letters of administration having been issued March 9, 1874 (fol. 81), and the administrator, without authority and contrary to his duty, having assumed the note August 31, 1875 (fol. 227), and presented it for allowance more than one year after the letters issued, to wit, on January 15, 1877 (fol. 232).

175 10. The court erred in not holding the order of sale directing that the land of the plaintiffs in error be sold to pay the outlawed or barred claim last above mentioned under the statute of limitations in Colorado. (This claim was barred, sec. 3606, statute, and, these facts appearing of record, the order of the court to sell the land to pay such claim was void.)

Wherefore plaintiffs in error pray that this cause be reversed and remanded, and for such other and further relief as to the court shall seem fit.

L. S. DIXON,
STEELE & MALONE, &
W. T. HUGHES,
Att'ys for Plaintiffs in Error.

176 [Endorsed:] No. —. In the Supreme Court of the United States. Sarah A. Sloan *et al.*, plaintiffs in error, *vs.* James R. Strickler, defendant in error. Assignment of errors.

Endorsed on cover: Case No. 14469. Colorado supreme court. No. 1015. Sarah A. Sloan *et al.*, plaintiffs in error, *vs.* James M. Strickler, administrator of Thomas M. Sloan, deceased. Filed January 31, 1891.

OCT 14 1891
JAMES H. McKENNEY
CLERK

IN

The Supreme Court

OF

The United States.

OCTOBER TERM, A. D. 1891.

SARAH A. SLOAN *et al.*,
Plaintiffs in Error,

vs.

JAMES M. STRICKLER,
ADMINISTRATOR,
Defendant in Error.

No. 1015.

Motion of Defendant in Error to Dismiss Writ of Error, and Brief and Argument in Support.

V. D. MARKHAM,
Attorney for Defendant in Error.

C. J. Kelly, Law Printer, Denver, Colo.

IN

The Supreme Court

OF

The United States.

OCTOBER TERM, A. D. 1891.

SARAH A. SLOAN, WILLIAM B. SLOAN *et al.*,
Plaintiffs in Error,
vs.
JAMES M. STRICKLER, ADMINISTRATOR, WITH THE WILL ANNEXED OF THE ESTATE OF THOMAS M. SLOAN, DECEASED,
Defendants in Error.

Error to the Supreme Court of the State of Colorado.
No. 1015.

MOTION OF DEFENDANTS IN ERROR TO DISMISS THE WRIT OF ERROR FOR WANT OF JURISDICTION.

And now come the defendants in error by V. D. Markham, attorney, and move this Honorable Court to dismiss the writ of error in the above en-

titled cause and assign the following reasons for this motion:

First—This Court has no jurisdiction over this case or any of the matters and things involved in this case, all of which fully appears from the Record now on file in this Court.

Second—The Record in this case fully shows that no federal question of any kind or character whatever is involved in this case or was decided by or necessary to be decided by the Supreme Court of the State of Colorado.

Third—That it fully appears from the Record that no such question was in any wise involved in this case before the Supreme Court of the State of Colorado, or decided by that Court in such a way as to give this Court jurisdiction in the premises.

V. D. MARKHAM,
Attorney for Defendants in Error.

SARAH A. SLOAN *et al.*, *Plaintiffs in Error,* vs. JAMES M. STRICKLER, ADMINISTRATOR, WITH THE WILL ANNEXED OF THE ESTATE OF THOMAS M. SLOAN, DECEASED, *Defendant in Error.*	*Error to the Supreme Court of the State of Colorado.* *No. 1015.*

BRIEF OF DEFENDANT IN ERROR ON MOTION TO DISMISS THE WRIT OF ERROR IN THE ABOVE ENTITLED CAUSE FOR WANT OF JURISDICTION.

This case is here on writ of error to the Supreme Court of the State of Colorado allowed by the Chief Justice of that State. This writ of error ought not have been allowed by the Chief Justice of the Supreme Court of Colorado.

It requires, as it seems to me, but a superficial glance at the Record and the opinion of the Supreme Court of Colorado rendered in this case, it being the highest Court of the State, to see that this Court has no jurisdiction over this case. The opinion of the Supreme Court of Colorado, now on file with the Record in this cause, can be found in Volume 12 at page 179, Colorado reports.

"As appears from the Record, this case is, in brief, as follows: In February 1874, Thomas M. Sloan died in Arapahoe County, Colorado, leaving a wife, certain children and grandchildren him surviving. At the time of his death he was seized of certain lands in said county, and by his last will and testament he devised certain parcels thereof to his wife, children and grandchildren, respectively,

leaving other parcels undevised. His will having been proved, the executors therein named resigned their trust; and his wife, all his children, and one Driscoll, the principal creditor of the estate, declining to administer, James M. Strickler was, by the Probate Court of said county, appointed and duly qualified as administrator with the will annexed. Strickler proceeded with the administration for about three years, when it was found to be necessary to sell some of the real estate to discharge the just debts allowed against the estate, which at that time amounted to about $5,000 more than the value of the personal estate; and thereupon, on February 21, 1877, the administrator presented his petition to said Probate Court for authority to sell the undevised lands, and also the devised lands, if necessary, for the purpose aforesaid. The widow, children, and grandchildren, devisees and others supposed to be interested therein, were made defendants; the grandchildren were minors. Summons was issued and served on the resident defendants, who appeared and answered. An alias summons was issued on April 3d, returnable on the first Monday of May, and, an affidavit of non-residence being filed, the first publication for the non-resident defendants was made April 7th; the last on May 6th. The alias summons was returned on June 4, 1877, showing service on all but the non-resident defendants. On June 6th, one Lorin A. Staley appeared and answered as guardian *ad litem* for the grandchildren, but his appointment as such does not appear of record.

On June 23, 1877, a hearing was had before the Court, and the whole lands in the county—first

the undevised, and the remainder afterwards, if required—were decreed by the Court to be sold for the purpose aforesaid. The whole was sold for $6,000; and, report thereof being made, the sale was confirmed on July 30, 1877, and the final account of the administrator was approved.

The said grandchildren, devisees, took the Record from the County Court to the Supreme Court of Colorado, upon writ of error, and asked the Supreme Court of Colorado to reverse the decree made by the County Court directing the sale of the said real estate. This the Supreme Court refused to do and confirmed the sale under the decree of the County Court of Arapahoe County.

It will be seen, by reference to the Record, that the only questions involved in this case, or presented to or decided by the Supreme Court of Colorado, or necessary to be decided by that Court, are questions which belong, solely and exclusively, to the State Courts, and that they are questions with which this Court has, times almost without number and persistently, refused to interfere. As appears from the Record, the proceedings on which the writ of error now in this Court is based were originally had in the County Court, which Court, prior to the adoption of the Constitution of March, 1876, was designated and known as the Probate Court of Arapahoe County. Under the Constitution of Colorado, Section 23, Article VI., this County Court is vested with the same original jurisdiction in all matters of probate, settlement of estates of deceased persons, appointment of administrators, guardians, etc., as the former Probate Court had prior to the Constitution. This section of the Con-

stitution reads as follows: "County Courts shall be Courts of record and shall have original jurisdiction in all matters of probate, settlement of estates of deceased persons, appointment of guardians, conservators and administrators and settlement of their accounts, and such other civil and criminal jurisdiction as may be conferred by law; *Provided*, such Courts shall not have jurisdiction in any case where the debt, damage or claim, or value of property involved, shall exceed $2,000, except in cases relating to the estates of deceased persons."

Section 9 of the schedule of the Constitution of Colorado reads as follows: "The terms 'Probate Court' and 'Probate Judge,' whenever occurring in the Statutes of Colorado Territory, shall, after the adoption of this Constitution, be held to apply to the County Court or County Judge; and all laws specially applicable to the Probate Court in any county shall be construed to apply to and be in force as to the County Court in the same county, until repealed."

In other words, no change was made in this Court except in its name.

Under the Territorial laws of Colorado, the Probate Courts in the several counties in the Territory had and always exercised unlimited jurisdiction over matters concerning estates of deceased persons.

Session Laws of Colorado, 1861, pages 382 to 386.

I may say, in the beginning, that in matters concerning the estates of deceased persons, where these estates and these matters have been settled and adjudicated under the statutes of the State by

proceedings had in the State Courts having jurisdiction thereof, including the highest Court in the State, this Court will not interfere. To give this Court jurisdiction in cases already decided by the highest State Court, Chief Justice Waite said, in Brown vs. Colorado, 16 Otto, 95: "To give us jurisdiction under Section 709 of the Revised Statutes of the United States, it must in some way appear from the return which is made to the writ of error that the validity of a treaty, or statute of, or an authority exercised under the United States, has been drawn in question, and the decision is against their validity; or that the validity of a statute of, or an authority exercised under any State, has been drawn in question, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of their validity; or that some title, right, privilege or immunity is claimed under the Constitution or any treaty or statute or commission held, or authority exercised, under the United States, and the decision is against the right, privilege or immunity so claimed."

Now, I might well ask, do any of these prerequisites to the jurisdiction of this Court appear in this case, either from the Record or otherwise, which the Chief Justice, quoting from Section 709 of the Revised Statutes of the United States, says it is absolutely necessary should appear in order to give this Court jurisdiction? So far from it, the Record clearly discloses the fact that not one of these things so necessary to give this Court jurisdiction did or could exist. It is very evident from the Record and from all that is before this Court that no treaty

or statute of the United States was drawn in question, and a decision made against their validity in the State Court. It is equally as evident that the validity of no statute or authority exercised under the laws of Colorado was drawn in question in the State Court upon the ground of their being repugnant to the Constitution, treaties or laws of the United States, and that the decision was in favor of their validity. And it is equally as evident that in the State Court no title or privilege or immunity was claimed under the Constitution or any treaty or statute of, or commission held or authority exercised under the United States, and that no decision was rendered against such title, right, privilege or immunity so claimed. All that was done by this, the highest State Court, in this case was to construe certain statutes of Colorado, with reference to the holding of terms of the Probate or County Court of Arapahoe County. Whether under the statutes of Colorado there was a term of said Court, and to which term original process was properly returnable on the 7th of May, 1877. Whether under the statutes of Colorado there was a May term of said Court. Whether the summons by publication was continued for a sufficient length of time to comply with the statute of Colorado. Whether, if the summons was not so published for the full length of time required by the statutes of Colorado, the defendants in the Court below, the plaintiffs in error here, had had their day in Court, and whether such summons was not void. Whether the Probate Court had jurisdiction of any case concerning the estates of deceased persons in which more than $2,000 was in-

volved. Whether the guardian *ad litem* was properly appointed. Whether a certain claim against the estate was not barred by the statute of limitations. Whether the petition for the sale of the real estate of the deceased, Thomas M. Sloan, set forth facts sufficient to confer jurisdiction upon the Probate or County Court of Arapahoe County, to order a sale of the real estate to pay the debts against the estate. The construction of these statutes of Colorado upon these questions peculiarly and exclusively belongs to the State Courts, and this Court has said in hundreds of cases that it will adopt the construction of the State statutes put upon them by the highest State Court; and this, even though the construction put upon these statutes by the State Court does not meet the approval of this Court. No one in the State Court ever contended or thought for a moment that these Colorado statutes, which were construed by the State Court, or any of them, were repugnant to the Constitution or laws of the United States. No such question was ever raised in or presented to or decided by the Supreme Court of Colorado, nor was it necessary to decide any such question.

This ought to suffice for the purpose of this motion, but I will call attention more particularly to the objections made by plaintiffs in error, and which, it is claimed by them, gives jurisdiction to this Court:

FIRST.

It is assigned for error by the first assignment that there was not, under the organic and statutory laws of Colorado, any May term of the Probate

Court of Arapahoe County in 1877, to which process could be properly returnable.

I have already called attention to the constitutional provisions and statutes of Colorado vesting this County Court with jurisdiction in such cases as this. By reference to the Session Laws of 1861, page 383, and the Revised Statutes of Colorado of 1868, Chapter 71, Section 6, it will be seen that the then Probate, now County Courts, were required to continue open for all probate business before them. These proceedings to sell this real estate were instituted in February, 1877 (Record, page 90, fols. 273 to 276), and this was long after the adoption of the Constitution of Colorado in March, 1876, and which Constitution, as I have already shown, ratified and adopted all previous statutes as to the jurisdiction of the former Probate Court.

The Supreme Court of Colorado, in construing the constitution and statutes of Colorado, 12 Colo., 179, Sloan vs. Strickler, held that there was a May term of the Probate Court of Arapahoe County in 1877, and that there was such a May term to which process was properly returnable. And in doing this the Supreme Court simply construe the Constitution and statutes of Colorado upon this subject—nothing more. I fail to see that there is anything in this which brings this case within the provisions of Section 709 of the Revised Statutes, and say as to this objection, there is no federal question to invoke the jurisdiction of this Court.

SECOND.

It is assigned for error by the second assignment that under the organic act of the late Terri-

tory of Colorado, the Probate Court of Arapahoe County had no jurisdiction over and could not take cognizance of any cause which upon the face of the Record showed that such cause involved an amount exceeding $2,000.

I have already shown that the old organic act of Colorado Territory has no bearing upon this case, as these proceedings to sell this real estate were commenced in 1877 and long after Colorado had ceased to be a Territory, and, besides, the statutes of Colorado, passed under the organic act, had conferred unlimited jurisdiction, as to probate matters, upon the old Probate Courts.

Session Laws of Colorado, 1861, pp. 382 to 386.

Under these statutes, estates to the amount of millions of dollars had been settled. Upon this point and construing these laws of Colorado, with reference to the jurisdiction of the Probate or County Court in such matters, the Supreme Court of Colorado, 12 Colo., 184-5, Sloan vs. Strickler, say: "The Constitution, Article VI., Section 23, expressly limits the civil jurisdiction of County Courts to be conferred by law to cases where the debt, damage or claim, or value of property involved shall not exceed $2,000; but as to the settlement of estates of deceased persons, as well as all matters of probate, etc., the jurisdiction is unlimited. From this the conclusion is almost irresistible that the proceedings of the County Court now under consideration is not to be classed under the common law or equity jurisdiction of the County Courts, but that it must be construed as a special statutory proceeding directly connected with the probate jurisdiction. Any other conclu-

sion renders the statute inoperative in the County Court when the property, as in this case, exceeds the value of $2,000."

So that, upon this point, the Supreme Court of Colorado has only construed the statutes of Colorado as to the jurisdiction of the Probate Court, and so far as any federal question is concerned it is entirely immaterial whether this construction of the Supreme Court of Colorado was right or wrong. And I do not see how any legal legerdemain can bring this decision within Section 709 of the Revised Statutes.

I might add, however, that the construction put upon the statutes of Colorado by our Supreme Court, as to the jurisdiction of the Probate Court, is the only sensible and intelligent one which could be put upon them. The bare proposition that the Probate Court could have jurisdiction of estates or probate matters to the extent only of $2,000 it seems is ludicrous, to say the least.

THIRD.

The third, fourth, fifth and seventh assignments of error may be treated as one, and presented together. By these it is assigned for error that the Supreme Court of Colorado erred in holding the summons of February 21, 1877, valid, because it departs from the statute which prescribes its requisites; and that the Court erred in holding the summons of February 21, 1877, a valid one, and the second summons an alias one, the first one being void; and that the Court erred in holding the publication of the summons a valid and sufficient publication; and that the Court erred in

holding that plaintiffs in error had had a full, fair, *bona fide* opportunity to be heard in a Court of original jurisdiction, and according to the laws of the land.

The only ground upon which these objections can be made, and, looking to the petition for a writ of error in this case, the only ground upon which they are made, is that these plaintiffs in error were denied that due process of law which is guaranteed by the Fourteenth Amendment to the Constitution of the United States, and so they are deprived of property without such due process of law. It is strange to what base uses this amendment to the Constitution, so grand in its intent, would be put.

6 Otto, 97, Davidson vs. New Orleans.

In this case, Justice Miller, speaking of due process of law as one of the vehicles for the transfer of a case from the highest State Court to the Supreme Court of the United States, uses the following language: "In fact, it would seem from the character of many of the cases before us and the arguments in them that the clause under consideration is looked upon as the means of bringing to the test of the decision of this Court the abstract opinions of every unsuccessful litigant in a State Court of the justice of the decision against him and of the merits of the litigation on which such a decision may be founded."

2 Otto, 480, Kennard vs. Louisiana.

Speaking of due process of law in this case, the Court say: "The question before us is not whether the Courts below having jurisdiction of the case and the parties have violated the law, but whether the law, if followed, would have furnished Kennard

the protection guaranteed by the Constitution. Irregularities and mere errors of proceeding can only be corrected in the State Courts. Our authority does not extend beyond the examination of the power of the Court below to proceed at all." In other words, it is wholly immaterial whether the State Court decided the law right or wrong, if it had jurisdiction. (And that it did have jurisdiction in this case, there is no shadow of doubt.) But, besides all this, these parties now complaining were twice heard by the State Courts as to whatever rights they had in the premises, first, in the County or Probate Court, and then in the Supreme Court of Colorado, being the highest Court in the State.

Further, as to what is meant, or rather what is not meant by due process of law, as used in the Fifth and Fourteenth amendments to the Constitution of the United States, see—

18 Howard, 272, Murray vs. Hoboken.
5 Otto, 37 to 42, McMillan vs. Anderson.
6 Otto, 99, Davidson vs. New Orleans.

But it is useless to multiply authorities upon a point with which this Court is so familiar. I may, however, add in this connection that in the class of cases like the one now under consideration—that is, a proceeding *in rem* to sell real estate to pay the debts of the estate—this Court has frequently held that, so far as the jurisdiction of the Probate or County Court is concerned, no notice whatever, either by publication or otherwise, is necessary to be given to these plaintiffs in error as heirs of Thomas M. Sloan, deceased.

101 U. S. 417, Mohr vs. Mannerre. This

case discusses the whole matter fully. Among other things, the Court held that no notice was necessary to give the Probate or County Court jurisdiction to order the sale of real estate for the payment of the debts of the deceased; and that the Court can make such order without notice whenever it appears that the personal estate is insufficient to pay the debts, and that the sale of the real property was necessary for that purpose. To the same purport are—

2 Howard, 319, Grignon's Lessee vs. Astor.
3 Wallace, 397, Comstock vs. Crawford.

The Supreme Court of Colorado held, in this case, in construing our statutes for such cases made and provided, that the summons of February 21, 1877, was a valid summons; that the publication of the summons was sufficient; that the plaintiffs in error had had full, fair and *bona fide* opportunity to be heard in a Court of original jurisdiction, and according to the laws of the land; and that the proceedings in the Probate Court were all regular and in conformity with the statutes of Colorado. What, then, is there to bring any of these matters or things within the provisions of Section 709 of the Revised Statutes, and where is the federal question involved?

FOURTH.

It is also assigned for error in the seventh assignment that the Supreme Court of Colorado erred in referring, in its opinion, to public policy. It is gross injustice to that Court to even intimate that its opinion was, in the slightest degree, based upon reasons of public policy. What that Court

said, in concluding its opinion, was this: "Public policy and common justice require that judgments of Courts of record of long standing, and upon the faith of which property rights have been acquired, should not be disturbed, except for most manifest error."

I might say that this Court will not sit in grand inquisition to hunt for the reasons of the State Court for its decision.

FIFTH.

It is assigned for error by the sixth assignment that the guardian *ad litem* for the infant defendants in the Probate Court was not properly appointed. The Supreme Court of Colorado held, in construing the laws of Colorado upon this subject, and in this case, that this guardian was properly appointed. Now, how or by what fiction can this be brought within Section 709 of the Revised Statutes of the United States, and how can any federal question be evolved out of it? This Court, under its previous rulings, would not interfere, even if no guardian at all had been appointed.

SIXTH.

It is assigned for error by the eighth assignment that the petition to the County or Probate Court for an order to sell the real estate of Thomas M. Sloan, deceased, to pay the debts of the deceased, does not set forth facts sufficient to confer jurisdiction upon that Court to order a sale of the real estate. The Supreme Court of Colorado has decided that, under the laws of Colorado, the petition did not set forth sufficient facts. How

can this be brought within the provisions of Section 709 of the Revised Statutes, and where is the federal question involved? This Court has, times almost without number, held that it will not interfere in such matters, but will assume, when the highest State Court has so held, that all things necessary to be done under the State laws have been so done.

SEVENTH.

It is assigned for error by the ninth and tenth assignments that the Supreme Court of Colorado erred in allowing the Higgins claim of $4,630 against the estate of Thomas M. Sloan, deceased, in this: That the same was barred by the statutes of limitations of Colorado, Section 3606, as letters of administration were issued March 9, 1874, and the administrator assumed the note August 31, 1875, and presented it for allowance against the estate January 15, 1877, more than one year after the issuance of letters of administration. Strange objection, indeed, when, as appears from the Record (fols. 322–325), this $4,630 claim was for money loaned by Higgins to the administrator, with the approval and upon the recommendation of the Court, to save this identical property from forced sale under a deed of trust given by Sloan in his life-time, and a mortgage was made to Higgins, with the approval of the Court, to secure the amount so loaned, and against which the statutes of limitations invoked in these assignments of error could, under no circumstance, run at all. The section of the statutes of limitations referred to has no reference whatever to

money loaned to the administrator to save the estate of the deceased from sale to satisfy debts contracted by the deceased in his lifetime, and which debt was secured by mortgage upon the real estate of the deceased. It is hardly necessary to say that the section of the statute referred to has reference to debts existing at the time of the death of the deceased, and even in such cases as that it does not and cannot interfere with debts secured by mortgage. The encumbrance still stands. And it was to relieve this identical property from such an encumbrance and an impending and threatened sale under it, and with the sanction and approval of the Court, that Higgins advanced the money to the administrator. And the Higgins money or claim paid off and took the place of the encumbrance placed upon this property by Sloan himself during his lifetime. The Supreme Court of Colorado, in deciding this case, held that this claim was not barred by the statute of limitations, and was properly allowed against the estate of Sloan under the statutes of the State of Colorado. How, then, can this be brought within Section 709 of the Revised Statutes, and where is the federal question involved?

If there are any other objections made by plaintiffs in error, they are too trivial to notice. All of the matters and things objected to or claimed to be errors by the plaintiffs in error have been considered and determined by the Supreme Court of Colorado in this case, and have been so construed and determined solely and only with reference to the construction of the Constitution and statutes of Colorado made

and provided for such matters and things, and not otherwise. And the Supreme Court of Colorado, in its opinion in this case, 12 Colorado, 185, uses the following language: "One further question remains to be considered: Were the proceedings regular and was the judgment valid, or was the same prematurely given? The preliminary steps, such as the filing of a proper petition, the issuance of summons, alias sunmons, with proper effort to serve the same, and the return thereof, the filing of an affidavit as to the non-residence of certain defendants, seem to have been taken in substantial compliance with the statute; also the continuance, the appointment of a guardian *ad litem* for the minors, and the hearing, decree, sale and confirmation thereof, appear to have been regular."

It follows, then, that no federal question was or is involved in this case; that no such question was before the Supreme Court of Colorado; that no such question was necessary to be decided by that Court; that there is no federal question for this Court to pass upon, and, therefore, this Court has no jurisdiction of this case or of any of the matters and things involved in it.

This Court has most emphatically and in language which cannot be misunderstood, in previous cases, held that it has not and will not take jurisdiction of such cases as this.

In conclusion, I beg leave leave to refer to a few of these cases.

11 Howard, 297, Van Renseallaer vs. Henry.
12 Howard, 111, Williams vs. Oliver.
24 Howard, 415, Porter vs. Foley.
6 Wallace, 382, The Victory.

6 Wallace, 142, Rector vs. Ashley.
11 Wallace, 36, Parmallee vs. Lawrence.
11 Wallace, 204, Ins. Co. vs. The Treasurer.
20 Wallace, 137, R. R. Co. vs. R. R. Co.
21 Wallace, 636, Moore vs. Mississippi.
91 U. S., 452, Townsend vs. Todd.
94 U. S., 315, United States vs. Fox.
101 U. S., 665, Suter vs. Wright.
107 U. S., 21, Burgess vs. Seligman.
125 U. S., 583, Buchner vs. R. R. Co.
14 Otto, 427, Boughton vs. Exchange Bank.

Upon the foregoing authorities, and for the reasons given, I respectfully submit that this Court has no jurisdiction of this case and that the writ of error ought to be dismissed.

V. D. MARKHAM,
Attorney for Defendant in Error.

Supreme Court U. S.
FILED,
DEC 1 1891
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1891.

TERM No. 1015.

SARAH A. SLOAN, ET AL, *Plaintiffs in Error,* *vs.* JAMES M. STRICKLER, ADMINISTRATOR OF THOMAS SLOAN, DECEASED.	In Error to the Supreme Court of the State of Colorado.

Answer to Argument upon Motion to Dismiss for Want of Jurisdiction.

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W. T. HUGHES,
Attorneys for Plaintiffs in Error.

The Smith-Brooks Printing Co., 1849 Arapahoe.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1891.

TERM No. 1015.

SARAH A. SLOAN, ET AL, *Plaintiffs in Error*, *vs.* JAMES M. STRICKLER, ADMINISTRATOR OF THOMAS SLOAN, DECEASED.	In Error to the Supreme Court of the State of Colorado.

Answer to Argument upon Motion to Dismiss for Want of Jurisdiction.

Stanley Mathews, in his learned and masterly argument in *Minor vs. Board of Education* (Ohio), remarked: "There is a world of things crowding upon me to say, but I must forbear." And so we feel, and

might with appropriateness repeat in this case. Here are involved new and unsettled statutes, weighty and leading questions, questions about which great and learned arguments are constantly indulged in. Every new statute, like limitations or frauds and perjuries, give numberless decisions, and many of these have to be overruled or modified before the law involved accords with right principles. The *Legal Tender Decisions* of this Court, and so felicitously presented to the profession in the late work of Justice Miller (pp. 135, 144), will illustrate the matter in hand. The questions there involved we do not conceive so weighty as those here.

"Due Process of Law" has been a guaranty extended to the Anglo-Saxon for more than six hundred years; and, strange as it may seem, what it is is a leading question to-day, after many revolutions and hundreds of decisions; and the latest and most authentic decisions upon the question will not permit us to undertake to define it. Justice Miller, in his recent work upon the Constitution, informs us that no satisfactory definition of one can be given; that it is easier to tell what a Constitution is not than what it is (Id. p. 60). Guizot, in his History of Civilization, is embarrassed with a similar proposition. No writer has yet definitely defined fraud; and here we are led to remark that the enemy of "Due Process of Law" is fraud. The latest expressions of this Court in fixing the domain of "Due Process of Law" allow us to treat it as something "special, arbitrary and contrary to fundamental principles." Probably no better definition of its scope and purposes can be found than in *Santa Clara Co. vs. Southern Pacific R. R. Co.* (18 Fed. Rep. 385, 398-406) by Justice Field. It must be admitted that the subject is in a fluent and formative condition to-day, and that to arrest this Court's attention something must be patent, which

suggests that a full, fair, *bona fide* opportunity to be heard has been given in a *Coram Judice.*

Davidson vs. New Orleans.
Chauvin vs. Valiton, 8 Mont. 451.

It seems we may be permitted to-day to consider "Due Process of Law" as everywhere opposed to fraud; a fraud that in some particular touches the fundamental principles of justice in the course of the administration of justice. Looking at "Due Process of Law" from this standpoint, we can see that so long as fraud goes undefined, so must the subject which fraud alone can vitiate. The adjudicated cases allow us to say that fraud actual or constructive is the vitiating element of "Due Process of Law."

The broad catholic reasoning found in the 18 Fed. Rep pp. 398, 406, are grounds for the belief that there will be no permanent crystilization of a constitutional guaranty of paramount importance, which shall exclude the interests of the infant and insane, and include the interests of all other classes. We have long learned that a court of equity favors infants, the insane, idiots, the inebriate, married women and all other persons suffering under disabilities. A cherished rule in equity is, it will do nothing against a *bona fide* purchaser in possession; but while this is true, the tender regard shown to persons incapacitated from acting for themselves, admits of the claims of no *bona fide* purchaser against such persons.

Hovey vs. Hobson, 53 Me. 451; S. C. 89 Am. Dec. 705.

We have had our attention called to *Mohr v. Manierre;* but where infants' or insane persons' interests are involved, and they have not had their day in court, we have much reason to believe that the reasoning we find in the 18 Fed. Rep. 398-406, and the doctrines of *Williams v. Bankhead*, *Shields v. Barrow* and *Miller v. Mahaffey*, 45 Ia. 289, will yet be extended to the weakest as well as the strongest of the guaranteed. We are addressing a Court that has developed and maintained great and important principles of law. *McCullough v. Maryland.* The cases gathered for illustration by Justice Miller in his recent work, pp. 128, 144 *Neagles Case*, *The Original Package Cases*, *Edwards v. Kearzey*, have vindicated and established the maxim "A grant of the principal thing carries its incidents" as was never before accomplished. Investigating the germs—the principles involved in cases like: *Williams v. Bankhead*, *Pennoyer v. Neff*, *Edwards v. Kearzey*, *Davidson v. New Orleans*, *McCullough v. Maryland* afford grounds for believing that *Mohr v. Manierre* will sooner or later be modified or abrogated by this Court.

Acquiescence in a decision often affords grounds for insistence upon its propriety and soundness. Justice Miller in his recent work vindicates some of the decisions of this Court upon that ground. If acquiescence in a decision is a positive argument for it, rejection or disapproval of it ought to be admissible argument for a contrary effect. And if this be so, it is permissible to suggest that the doctrine of *Mohr vs. Manierre* has and is receiving a wide discussion; and that not only Courts but many text writers as well, are regarding it as a stumbling block in our jurisprudence and an obstruction which must be sooner or later removed for the proper, consistent and harmonious developement of "Due Process of Law."

Waples Proceedings, in rem., Secs. 574, 576.
Brown on Jurisdiction, 64, 143.
2 Woerner's Adm., Sec. 463.

Beyond these, cumulative citations we deem unnecessary. But for *Mohr vs. Manierre* we would certainly present a federal question, and a great national guaranty tantamount to any inalienable right, and of these the law is well settled, they cannot be waived. Indeed it is a general rule that constitutional rights cannot be waived. Constitutional rights involving *Salus Populi Suprema Lex* cannot be waived; and it will be regretable if when "Due Process of Law" shall become a well settled and defined subject, if it will then afford grounds for the argument that consent will confer jurisdiction of the subject matter; that silence or acquiescence will supply a *Coram Judice*. Stating one of the lesser branches of the great subject involved in this language, shows us with what we are confronted whenever there is a captious and technical insistence that one has waived his rights, that he has "sinned away his day of grace before its dawn had broke.

Reasoning from these premises and keeping fraud prominently in sight, it must be difficult for a Court to approve a petition for leave to sell real estate to pay debts, pp. 74-77 of the Record, to be considered in connection with the petition for a re-hearing made by Judge Dixon at pp. 96-107 of this Record, and which, to avoid prolixity, we adopt by reference as a part of our argument here. If the petition to sell real estate conferred jurisdiction upon the Court it would not be unreasonable nor contrary to fundamental justice to hold that the service of a summons issuing therefrom was a necessary incident, and as such is to be properly included within

the meaning of "Due Process of Law." This summons, p. 73 of the Record, was served by publication in a weekly newspaper, the first issue being upon April 7th (a Saturday), 1877, and the last publication was on May 6th (a Sunday), 1877. This publication was a strict statutory proceeding contrary to the course of common law, and hence every presumption is to be made against it. Construing it as favorably as we can, we cannot fail to see the greatest irregularities in it; that it was not published for five consecutive insertions. It is most favorable for the publication to construe the paper a weekly one, and if we do that we have the first insertion on a Saturday and the next, or some other one, on a Sunday; and indulging in a legitimate presumption, the first publication appeared on April 7th (a Saturday) and the next one on April 15th (a Sunday).

Statute 1877, Gen. Sec. 2,889, p. 965, G. L., required publication "*for four weeks successively.*" This section was existing and has continued the law. It is now Gen. Sec. 3583, p. 1048, Gen. Stat. Colo.

Fraud, we have assumed, is a vitiating element and at least it is constructively present in this case. The only question is, is it *de minius non curat lex?*

REGULAR ALLEGATIONS.

Rules of Res Adjudicata 8, *I Herm. Estop.* 24, 25; notes to *Duchess of Kingston's case*, I Sm. Lead. Cas. and all former conceptions of allegata and probata, that evidence must correspond to the allegations and be confined to the point in issue, that there can be no recovery other and different to the grounds alleged, *Abb. Brief on the Plead.* Sec. 1027; *Munday vs. Vail*, 34 N. J.

(Law) 418; *Borkenhagen vs. Paschen*, 72 Wis. 244; S. C. 39 N. W. Rep. 772; *Furman vs. Nichol*, 8 Wall. 44; *Murray's Lessee vs. Hoboken Land Co.*, 18 How. 272; are in serious danger of being swept away by what was lately called the new and enlightened doctrine, 2 Thomp. Tri. 2310–2311 and cases here cited, not one of which supports the text. But cases are found in Colorado which supports that extraordinary text, such as *Berdell vs. Bissel*, 6 Colo. 162, 164; *Salsbury vs. Ellison*, 7 Colo. 167; (these cases hold *estoppel in pais* conduct before a Court will supply *record matter*) or will supply a replication, *Quimby vs. Boyd*, 8 Colo. 194. To elucidate what is involved in these remarks would require too much space. We leave it for the mind to conceive if any distinction longer remains between *matters of record* and *matters in pais*, and how an estoppal of record must be pleaded and proved in cases where it depends on an estoppel *in pais;* and what will become of the rule that pleadings must be found in the record proper as opposed to the bill of exceptions, granting in each case a bill of exceptions has been filed, an assumption which is very far from the truth in many cases. In this case reasons of public policy or "Salus populi suprema lex" were imported into it otherwise than by "regular allegations," or by any kinds of evidence. Res Adjudicata while an independent head in the law, is nevertheless a large and constituent one of "Due Process of Law." The first elements of Res Adjudicata are first, a Coram Judice, and second, a record containing regular allegations. A careful reading of the rule cited justifies this conclusion. The opinion in this case shows that public policy was a determining element and more, the inference is irrefragable that the Court assumed and considered it was rightly dealing with *stare decisis*, and also decisions that had become a rule of property, when there is nothing whatever in the record to warrant these assump-

tions. Therefore, there was no opportunity to be heard upon regular allegations or otherwise, nor had plaintiffs in error even acquiesced by conduct or otherwise before any court that such matters were in issue. No hearing has been heard on these matters, nor is it shown that any decisions had been made in Colorado upon such a *coram judice*, or such a petition, or such a service of summons as has been shown here. On the contrary, the rule in Colorado is, under its latest decision, *Cuenin vs. Becket* 1891, "where the foundation fails all goes to the ground;" or in other words, where there is no complaint filed in a cause, the judgement is void, without any reservation for estoppel *in pais* conduct before the court or as to how it might otherwise be supplied. An Adjudication is void in that state for the absence of a placita.

Skinner vs. Beshoar, 2 Colo. 383.

A strict rule for the publication of summons is also applied, *O'Rear vs. Lazarus*, 6 Colo. 608.

Without citing further cases, enough is shown here to show that the doctrines of *Galpin vs. Page* and *United States vs. Runkel*, are not rejected in that State, nor that all distinctions between matters of *record* and in *pais* are broken down and swept away.

It is a rule that a demurrer searches the whole record and attaches itself to the first pleading in fault. It is an indecorum to assert to this Court, with neither allegations or proofs or citations of any authorities, even that a rule of property is involved here. Whether or not millions of property are involved rests on an *ipse dixit* of counsel; and we cannot very well help noticing this sufficiently to suggest that the first opinion ren-

dered in this cause was in favor of plaintiffs in error, and was made by the Supreme Court Commission and accepted by every member of the Supreme Court, and that the present opinion was only brought forth after a change in the members of the Court. The petition for a rehearing substantially states these facts (p. 96 of the record). Enough is here involved to show the conflicting and unsettled law of the State upon matter which is treated by defendants in error, as well settled and of long standing, and they assume that the matters at bar involve decisions that have become rules of property without any right whatever to do so.

It is not strained argument to say that plaintiffs in error were defeated by the last opinion returned in the cause upon matters not introduced in the cause upon regular allegations and proofs, or upon any notice whatever, and the rule in such cases is that where an ambiguity exists as to whether or not a federal question is involved because of the opinion or judgment being equivocal, that it will be presumed in that way most favorable to entertaining jurisdiction. And from this standpoint we are justified in representing that plaintiffs in error were defeated upon elements not introduced by regular allegations, and upon which they had a real, *bona fide* opportunity to be heard.

It is not difficult to see what the "new and enlightened doctrine," as Mr. Thompson designates it, has, and is leading to; what confusion it will spread and what a barrier erected to prevent usurpation of power will be swept away, and that the maxim "Courts are bound by their records" can no longer have any safe or stable application. The Colorado cases are among the foremost and must be ranked among the most conspicuous in this new, and we believe, dangerous de-

parture. In cases like this it is necessary to call attention to it, for it must lend strength to the argument that the Court imported other elements for consideration into the case than was found in or raised upon the record. Whenever this is done there is ample ground to submit to this Court, if there is not a federal question involved whenever these is insistence for regular allegations, evidence, and a real, fair, *bona fide* opportunity to be heard.

A CORAM JUDICE.

The widow, heirs at law and the devisees, under the will, were all made parties defendants in the petition for the sale of the real estate, as required by Section 97, of said Chapter 90, General Statutes, which provided as follows: "To such petition the widow, or husband and heirs at law, of such decedent, and the devisees of such real estate, if the same, or any thereof be devised in the will of the decedent, and the guardians of such of them as may be minors, shall be made defendants."

And the next Section was as follows: "Upon the filing of such petition a summons shall issue against the defendants therein named, directed to the sheriff of the county, requiring the defendants to appear and answer the petition, upon the return day of such summons."

The original summons in the case was issued on February 21, 1877 (p. 64) and commanded the sheriff to summon the said Amanda S. Lockwood, Thomas R. Sloan, Daniel Witter, Wilber C. Lothrop, Mitchell Benedict, James K. Doolittle and Emmet Wells, to be and appear before the Court on the first day of the next term thereof, to be holden on the first *Monday in March*, 1877. The names of the other defendants were omitted

from said summons. This summons was returned on February 23d, following (p. 65), showing service on all named therein, except Sloan and Wells; the said Sloan and the remainder of said defendants were non-residents of the State. The notice to them of the filing of the petition, the issuance of the summons returnable on the first day of the next term of said Court, to be holden in Denver, in said county, on the first Monday of March next, and requiring them to appear and plead to said petition during that time, was published for four weeks, the first publication being on February 24th, and the last on March 24th.

This summons should have contained the names of all the defendants as required by section 98 of chapter 90, Gen. Laws, Colo., 1877. It could not in any way effect the parties not named therein. The publication of the notice was ineffectual for any purpose, for the reason that a proper summons should have been issued, and held until the return day thereof.

Vance's Heirs vs. Maroney, 4 Colo. 47.

And for the further reason that the time stated in the summons for the return thereof, and in the notice for the appearance of the defendants, was insufficient, and not at all as provided by law, as will be seen by what is said of the *alias* summons.

The *alias* summons (if it can be called such) was issued to all the defendants April 3, 1877, p. 73, record, and commanded them to appear before the Court on the first day of the next term thereof to be holden at the court house on the first Monday of May, 1877, to answer unto the petition of James M. Strickler, administrator, etc., on the return day thereof, stating that said petition

had been filed, and prayed the Court to decree and direct the sale of real estate of deceased for the payment of debts. The widow, four of the children, distributees, and all of the grandchildren, devisees, being non-residents of the state, the first publication of the notice to them occurred April 7, (a Saturday), and the last May 6, (a Sunday) following. Section 99 of said chapter 90 provided that, "Every such summons shall be made returnable on the first day of the term of the Court next succeeding the date thereof." Section 102 provided for notice, by publication to the non-resident defendants in such proceedings, of the filing of the petition, the time at which the summons is returnable, or if such publication be made after the return day of the summons, the time to which said petition is continued, and requiring the defendants to appear and answer the petition of such return day, on such day to which the petition is continued. Section 103 of said chapter provided as follows: "If such summons be not served at least ten days before the return day thereof, or if, in cases where notice by publication is permitted by the last preceding section, the first publication of such notice, be not at least sixty days before the day therein named for the defendants' appearance, the cause shall stand continued until the next succeeding term of the court; *alias* summons may issue from time to time, as to any defendant not served." And section 104 provided that the proceedings upon such petition should conform as nearly as practicable to the proceedings of courts of chancery in like cases, and the issues accordingly found and determined.

The following is the act providing for the terms of court :

"There shall hereafter be six terms of the said Probate Court during each year, commencing on the first

Monday of the months of January, March, June, July, September and December." Act of February 13, 1874, Acts of 1874, p. 218.

The terms of the said Court, as then provided by the act of February 13, 1874, were six in number for each year, and commenced on the first Monday of January, March, June, July, September and December, and such terms were the terms referred to in the foregoing provisions of the section cited.

Vance's Heirs vs. Rockwell, 3 Colo. 240, 245.

It will be seen that there was no May term to which this summons could be returnable, and that there were less than sixty days from the first publication to the day named for the appearance of the defendants, and less than sixty days to the first day of the next term of the said Court, the same being Monday, June 4, 1877. So, by the statute, the cause stood continued to the next succeeding term, which was in July; but the hearing was had and sale order made June 23. It follows that the summons and notice were insufficient to confer jurisdiction over the non-resident parties; that the hearing was had and decree directing the sale made before the time provided by law, and before the time allowed by law for the non-resident defendants to appear and oppose the same; for the reason, therefore, that the Court proceeded in the premises without the necessary parties before it, the said decree and order of sale was erroneous.

Marshall vs. Rose, 86 Ill., 374.
Vance's Heirs vs. Maroney's, 4 Colo., 47.
O'Rear vs. Lazarus, 8 Colo., 608.

Taylor vs. Connor, 7 Ind., 120.
Sibley vs. Waffle, 16 N. Y., 190.
Lessees of Adams vs. Jeffries, 12 Ohio, 253.
Sheldon vs. Newton, 3 Ohio St., 506.
Woerner's Admin., Sec. 463.

The appearance, for the said minors, non-residents, by guardian *ad litem* before they were duly notified, did not bring them nor their property in the premises under the dominion of the Court.

Chambers vs. Jones, 72 Ill., 275.
McDurmaid vs. Russell, 41 Ill., 491.

In *Vance's Heirs vs. Rockwell*, 3 Colo., 240, 245, is a construction of the statute, providing for six terms of court. This decision is overruled in the last opinion filed in this case.

THE APPOINTMENT OF THE GUARDIAN.

It is elemental that inferior tribunals exercising statutory powers contrary to the course of the common law, must make every jurisdictional fact appear and remain of record. This rule also applies to superior courts exercising statutory powers.

Galpin vs. Page, 18 Wall. 350.
Runkel vs. U. S., 22 U. S. 543.
Williamson vs. Berry, 8 How. 495.
Williamson vs. Ball, Id. 566.
Thatcher vs. Powell, 6 Wheat. 119.
Mayhew vs. Davis, 4 McLean 213.

Strange as it may seem, the law upon this important point is still in conflict.

Notes to Crepps vs. Durden, I Sm. Lead. Cas. See also
Harvey vs. Tyler, I Wall. 342.
Ransom vs. Williams, Id. 318.

The general rule and numberless decisions require that every jurisdictional fact must be shown upon and by the record, in proceedings before superior courts exercising statutory powers not according to the course of the common law. The appointment of the guardian to act for the absent and infant heirs does not appear upon nor is it shown from the record. This important feature is closely allied to that involved with "regular allegations," which we have noticed *supra*. "When the foundation fails, all goes to the ground."

Beck vs. Cuenin, *supra*.
Vance's Heirs vs. Maroney, 4 Colo. 47.

The maxim "Everything is presumed to have been rightly and regularly done" has never been applied to inferior tribunals. Now this rule must either continue so, or be changed in cases like this. We have neither time nor space to elaborate the views presented from this standpoint. We believe it is much the best to leave something for the mind to conceive.

STARE DECISIS.

The difference between the French under a Constitution, and the Anglo Saxon, is the respect of the latter for Stare Decisis.

Cool. Const. Lim. 65 and notes, 6th. Ed.

Rules of property injected into this case by the oral declarations of counsel are not equal to, much less superior to, the doctrines of Stare Decisis and its essentiality in equal and uniform law. In this, the formative period of a young state's jurisprudence, we not infrequently see the announcements of new and startling doctrines. We have referred to these in *Berdell vs. Bissell; Salsbury vs. Ellison, supra.* Another illustration is found in *McCoy vs. Wilson* (8 Colo. 335, 338) where the Court decided that an *appellee* who did not take exceptions and incorporate in the record errors committed by the *appellant* who introduced incompetent evidence for want of a plea, was at fault; and for this reason, for the *appellant*, the cause was reversed. See,

Shutte vs. Thompson, 15 Wall. 150, 159.

In *Vance's Heirs vs. Maroney*, 4 Colo., 46, law is announced by the Colorado Court which is decisive of the question above mooted touching the *alias* summons and the aquisition of jurisdiction. This decision is overruled by the last opinion offered in this case. The law announced in *Vance's Heirs vs. Maroney*, touched questions of "Due Process of Law," and was a construction of statutes involving that question. This is a fed-

eral question, and so is everything that is special, arbitrary and contrary to fundamental principles. *Stare Decisis* is a fundamental principle, and from this standpoint we think sufficient ground is afforded for this Court to take jurisdiction. In *Vance's Heirs vs. Rockwell*, 3 Colo., 240, 245, is construed the Territorial Act of 1874 above cited, fixing the terms of Court for the then territory. This was practically a federal act, and a construction by practically a federal Court. Under this act and this construction the summons was published. Under this act and that decision, the summons and its publication in this case was absolutely void. The opinion filed in this case overrules *Vance's Heirs vs. Rockwell.* Here is something special, and we conceive arbitrary and contrary to fundamental principles; at least is contrary to *Stare Decisis* which lies at the base of "equal and uniform law." It is queer that a federal Court which construed an act to have one meaning should be overruled, and this same law be construed by a Court practically the successor of the former one, to have an entirely opposite meaning. On matters, too, touching and involving not *Stare Decisis* alone and the obligation of Courts to adhere to precedents, but "Due Process of Law" as well.

We have referred to "regular allegations" and evidence and the necessity of elements that determine a cause to appear and arise from *allegata and probata.* This rule, Stare Decisis, obligation to precedents—the Court's own former decisions—are opposed to the opinion last filed in this cause. Against all these something stronger is needed than reasons of public policy, which are injected in the case just as they are in the argument we are now answering. From this view how can it be said that a rule of property is involved, or that the welfare of the public is subserved by a case like this,